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UNITED STATES OF AMERICA.

INDIANA

ELECTION LAWS
(COMPLETE.)

REPRINTED FROM

Burns' Annotated Statutes

OF THE

STATE OF INDIANA.

(APPROVED BY THE SUPREME COURT.)

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INDIANAPOLIS:
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ADVERTISEMENT.

The following pages contain the Indiana Election Laws, full and complete. They are an exact reproduction of all Election Law contained in the last Revised Statutes of the State of Indiana, and are up to date. They include the duties of the State, County, Town and Municipal Boards; crimes and penalties for election violations; together with National and State constitutional provisions pertaining to elections, with full and complete index. Also the instructions to voters and election officers, issued by the committee appointed for that purpose in 1894.

EXPLANATION.

The index of this work is by section numbers. The section numbers correspond with those in the latest Revised Statutes, and are therefore not continuous. Following these section numbers, is given, in ordinary figures, the section number of the revision of 1881, if the section is a part of that revision. The section number preceded by E. S., refers to Elliott's Supplement. Following the section head-lines there is given, in ordinary figures, the original number of the section of each act as a means of readily referring to the various statutes in the place where they first appear, and to assist in identifying the statutes as referred to in the published court decisions.

In the insertion of statutes, the merely formal matters, such as the title and enacting clauses, are omitted. Emergency clauses are also omitted, but the date of the taking effect of each act is given.

All statutes expressly repealed have been omitted, and where a section has been amended, the new section is inserted in the place of the old one, with a reference to the amending act.

NOTE.

The following abbreviations are used in the citation of cases: Blkf., Blackford's Reports; Ind., Indiana Supreme Court Reports; App., Indiana Appellate Court Reports; Ell., Elliott's Supplement.

INSTRUCTIONS

—TO—

Voters and Election Officers.

Messrs. Gowdy and Taggart:

CHAIRMEN—Having been appointed by you as a committee to consider certain matters arising under the amended election law, we report that our opinion as to the proper construction of the law on the several points referred to us is as follows, and the forms requested are hereunto appended.

Committee of 1894.

R. O. HAWKINS,
WM. L. TAYLOR,
JACOB P. DUNN,
WM. W. SPENCER,
LEON O. BAILEY,
F. WINTER.

We concur in and agree to abide by this report.

T. TAGGART,

Chairman Democratic State Committee.

JOHN K. GOWDY,

Chairman Republican State Committee.

SEPTEMBER, 1894.

ELECTION—WHERE HELD.

The polling place in each precinct must be designated by the Board of County Commissioners at their June term, next preceding the election; but, if from any absolute unavoidable circumstance, this can not be done, the Election Board should meet at, or as nearly as possible at, the place designated by said County Board of Commissioners, and there organize and then adjourn to the place nearest the one selected by the County Commissioners, which may be found. In such cases, care should be taken that no voter lose his vote by this change, and, if necessary, some person or persons should be stationed at the point designated by the County Commissioners, whose duty it shall be to notify voters of the change in the voting place.

CHUTE.

In constructing the chute, and in enforcing the provision that no person shall remain within fifty feet of the challenge window, regard should be had to the purpose of the statute. Passage along the highway should not be unduly obstructed. Persons passing or being within fifty feet for manifestly necessary and lawful purposes should not be hindered or molested.

INSTRUCTIONS TO VOTERS

We recommend the following instructions to voters, required by Section 85 to be printed on the cards which are to be posted at the polls as sufficient to meet the requirements of the law:

First. You must get your ballots of the polling clerks in the election room.

Second. If you want to vote a straight ticket, stamp within the large square at the head of the ticket containing the device of the party for whose candidates

you wish to vote. If you do not wish to vote a straight ticket you must not stamp the large square containing the device of your party, but you must stamp the small square to the left of the name of each candidate for whom you desire to vote, on whatever list of candidates it may be. If the large square at the head of the ticket is stamped, and the ballot is stamped at any other place, it is void and can not be counted, unless there be no candidate for some office in the list printed under such stamped device, in which case he may indicate his choice for such office by stamping the square to the left of the name of any candidate for such office on any other list. The stamp must be placed within or on the square or the ballot is void and can not be counted.

Third. Do not mutilate your ballot, or mark it either by scratching a name off or writing one on, or in any other way, except by the stamping on the square or squares, as before mentioned. Otherwise the ballot will not be counted.

Fourth. After stamping your ballots, and before leaving the booth, fold them separately, so that the face of them can not be seen and so that the initial letters of the names of the polling clerks on the back thereof can be seen. Then hand your ballots to the inspector, the stamp to the polling clerk, and leave the room.

Fifth. If you are physically unable to stamp your ballots, or cannot read English, so inform the polling clerks and tell them how you wish to vote and they will stamp your ballots for you. But the voter and clerks should not permit any other person to hear or see how the ballots are stamped.

Sixth. If you should accidentally or by mistake deface, mutilate or spoil your ballot, return it to the poll clerks and get a new ballot.

[Insert Sections 43, 50, 55, 56, 59 and 60 in full.]

SAMPLE BALLOTS.

The sample State and local poster ballots, provided for by Section 35 of the statute, Acts of 1889, page 174, three of which are to be posted by the Inspector, in and about each polling place, should be printed in large type, each on a sheet of paper about 25x38 inches in size. The sample State ballot will be prepared by the State Board of Election Commissioners and enclosed in the package of State ballots for each precinct. They will be printed on yellow paper, and will have printed thereon the words, "Sample Ballot. Genuine State ballot is on red paper."

The sample local ballot should be prepared by the County Board of Election Commissioners, and enclosed in the package of local ballots for each precinct of the county. The sample local ballots should be printed on blue paper, and should have printed thereon the words, "Sample Ballot. Genuine local ballot is on white paper." The sample township ballot should be prepared by the County Board of Election Commissioners, and enclosed in package of township ballots for each precinct of the county. The sample township ballot should be printed on brown paper, and should have printed thereon the words, "Sample Ballot. Genuine township ballot is on yellow paper."

If deemed desirable by committees of political parties or by candidates, for the purpose of the instruction of voters, ballots conforming to the above description of sample ballots may be printed of any size, on green, blue and brown paper, respectively, and posted up or circulated by such committees or candidates at any time during the political canvass.

BALLOT BOXES.

The Board of Commissioners of each county provide at the expense of the county three ballot boxes, one painted red, for the reception of the State ballots; one painted white, for the reception of the local ballots; and one painted yellow, for the reception of the township ballots (Sec. 10), and also Section 2, Acts 1893, page 192. Said Board of Commissioners delivers all the ballot boxes and all the election paraphernalia, except the ballots, to the place where the election is held, prior to the day of election.

HOW TO STAMP A TICKET.

Each party emblem or device is enclosed in a square at the top of each list of candidates. To vote a straight ticket stamp this square and nowhere else. To vote a scratched ticket do not stamp in the large square at the head of the list, but stamp in the small square to the left of the name of each man you wish to vote for, and nowhere else. A stamp that touches a square must be counted as being on the square. A stamp that touches no square is a distinguishing mark

and makes the whole ballot void. If a large square enclosing a device is stamped, a stamp anywhere else on the ballot makes it void and it must not be counted, unless on the ticket so stamped at the head there is a blank where the name of a candidate might have been inserted, in which event the voter may stamp the square to the left of some name for that office, and such ballot should be counted. (Sec. 45).

In case there are two or more persons to be elected to the same office, as in the case of Senators and Representatives in the Legislature, Judges of the Superior Court, Justices of the Peace, etc., if the name of one or more, but less than all, of such persons for a particular office are stamped on one or more of the tickets, the ballot must be counted for the persons whose names are so stamped; but if in such case the names of more persons than are to be elected to the particular office are stamped on any ballot such ballot can not be counted for any person for that office, for the reason that it can not be determined which of the right number to be elected were intended to be voted for, but the ballot is valid and must be counted for the candidates for other offices as to whom it is properly stamped. (Sec. 52 and Sec. 4766, Revised Statutes, 1881.)

NOMINATION OF TOWNSHIP CANDIDATES.

The nomination of candidates for township offices must be certified to the County Clerk in the same manner that nominations for county officers are certified.

In case of primary elections in townships having no township committee the nominations should be certified by the chairman and secretary of the county committee of the county in which such township is situated.

The certificates showing these nominations must be, by the County Clerk, laid before the County Board of Election Commissioners, and upon this authority said Board must cause the names of such township candidates to be printed upon an official township ballot, and upon yellow paper, and in the same manner that the names of candidates for county offices are printed upon official local ballots. Such is the provision of the statute of 1893 in relation to the election of township officers, when considered together with the provision of the general election law which governs in such matters.

The certificates of nomination of township candidates must be filed with the County Clerk not more than sixty and not less than fifteen days before the day of election, the time prescribed by law for the filing of certificates of nomination for county offices. (Sec. 18.)

PASTER TICKETS.

The law permits the use of complete pasters, by which is meant a complete ticket pasted on the ballot by the voter without the knowledge of the Board, in accordance with Section 10 of the election law of 1891. If such a ballot be found in the box, the Board should carefully examine Section 46 of the law, and if it does not comply with the provisions of that section, the ballot is void and should not be counted.

WATCHERS.

No watchers are to be allowed in the election room, either during the voting or during the count. No person other than the members of the Election Board, Poll Clerks and Election Sheriffs, if any be appointed, can be permitted in the election room during the canvass of the votes, or during the election, except for the purpose of voting.

INSPECTORS.

An Inspector must have been a freeholder and resident householder of the precinct for one year, or a resident householder for two years. He must not have any bets on the election, or be within prohibited degrees of relationship to any candidate to be voted for. (Secs. 3, 4 and 7.)

Not more than three and not less than two days before the election the Inspector, or the Judge authorized by him, must be at the Clerk's office and receive the ballots for his precinct. (Secs. 33, 36 and 37.) Before going he should inform himself as to whether the vote in his precinct has increased fifty per cent. since the last Presidential election. He will receive ten local ballots for each five voters in his precinct, which must be counted, wrapped and sealed in his presence. He will also receive ten township ballots for each five voters of his precinct, which must be counted, wrapped and sealed in his presence. He will also receive a sealed package containing the State ballots and the stamps for his pre-

inct. He will also receive cards with printed instructions for voters, twelve in each language in which they are printed. He should also receive three sample ballots for the State, and three for the local, and three for the township ballots. All these must be carefully guarded and preserved. (Secs. 33 and 35.) If by any accident they should be lost or destroyed he must report at once to the County Board of Election Commissioners and obtain a new supply. (Secs. 29 and 38.)

Appointing Judges.—Prior to opening the polls the Inspector must appoint two judges from the leading political parties. (Sec. 4.) The Chairman of the Democratic and Republican County Committees may name the Judges, but must do so at least one week before the election. (Sec. 3.) If any member of an election board shall fail to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a member of his political party to serve in his stead. The qualified electors of his party present at the polls may nominate a qualified person for such vacancy and such nominee shall be appointed. If none of the members of the election board appear at the hour appointed for the opening of the polls, the qualified electors present shall elect a board *vive voce* as nearly as possible in conformity with the above provisions. (Sec. 4.)

Posting Directions.—The Inspector should be at the polling place shortly before 6 o'clock and post the instruction cards and sample ballots. One of each kind of cards and sample ballots must be posted in each booth and one of each kind at the outer end of the chute. Three of each kind of cards and three sample ballots should be posted about the polls beyond the fifty-foot limit. (Sec. 35.)

Taking Oaths.—If no person is present at the polling place on the morning of election authorized to administer oaths, the Inspector administers the oath to the Judges, then one of the judges administers the oath to the Inspector. Blank forms of oaths are among the election papers. (Secs. 7, 8, 57, 58.)

Opening Ballot Packages—The Inspector opens the ballot packages in the presence of the Board by cutting the string and leaving the seals unbroken. He delivers twenty-five of each of the State, local and township ballots to the Poll Clerk of the party opposing his own, and the stamps to the other Clerk, who has charge of the same. As soon as a ballot has been delivered by the Poll Clerk to a voter, the Inspector must deliver another ballot to the same Poll Clerk, so that, at all times, the Poll Clerk should have twenty-five of each of the State, local and township ballots before him.

Chairman of Board.—The Inspector acts as Chairman of Board (Sec. 9) and must announce the opening and closing of the polls. (Secs. 12 and 14.) His duties, as member of Board, are set forth hereinafter under the head of "Election Board."

Custodian of Papers.—At the close of the canvass, the Inspector must take charge of the sealed bag containing all affidavits made; all protested, disputed or defective ballots, with the seals of the ballot packages; one of the lists of voters kept by the Poll Clerks, and one of each of the State, local and township tally papers. For further particulars as to how these packages shall be sealed and where they are to be delivered, see under the head of "Disposition of Papers," as set forth under the sub-head of "Election Boards."

ELECTION JUDGES.

Election Judges have no duties except as members of the Election Board, which see.

POLL CLERKS.

Poll Clerks must be qualified voters of the precinct and taken from the two leading parties. They may be nominated by the respective County Committees four days prior to the election. (Sec. 5.) But if not, they must be selected and appointed by the Board of Election, one from each of the two leading parties. (Sec. 5.)

Oath of Office.—The first duty of the Poll Clerk is to take the oath of office. (Sec. 9.)

Pasters.—On receiving ballots from the Inspector, the Poll Clerks must place all necessary pasters on them in their proper places, when a candidate has been properly named to fill a vacancy occasioned by the death, removal or resignation of any candidate after the tickets have been printed. (Sec. 27.)

Initials on Ballots.—The Poll Clerks must place their initials, in ink, on the upper right hand corner of the back of each ballot immediately upon receiving the ballots from the Inspector. (Sec. 34.) This must be done in the ordinary

hand writing without any distinguishing marks. (Sec. 34.) Twenty-five ballots must be kept ready for delivery to the voters, and the one first signed must be first delivered. Placing any mark on the ballot by which it may afterward be signaled out, is a penal offense. (Secs. 60 and 61.)

The Voter and Poll Clerks.—On entering the election room, the voter announces his name to the Poll Clerks, who, at once, register it. Then they furnish him with ballots and a stamp, and, on request, explain to him the manner of voting. This explanation must be made in the presence of the whole Board. If necessary, the Board may call an interpreter. (Sec. 45.) The voter, after stamping and properly filling his ballot in the booth, must return the stamp to the Poll Clerk from whom he received it, and deliver his ballot to the Inspector. In no event shall the voter be allowed to remain in the booth more than five minutes. When his ballot is deposited in the ballot-box, the Poll Clerks must write the word "voted" after his name on the poll list. (Sec. 45.) If the elector declares that, on account of physical disability or inability to read English, he can not stamp his ballot, the Poll Clerks must do so for him in the presence of each other and of such voter, and, on request, must read over the names of the candidates as marked. It is a felony for a Poll Clerk to deceive any elector in selecting or stamping his ballot. (Sec. 48.) If the voter accidentally, or by mistake, spoils, mutilates or defaces his ballot, the Poll Clerks must give him another and have him destroy the first in the presence of the Board (Sec. 47), and they must make a minute of the fact on the poll list at the time. If the voter discloses how he has stamped his ballot it must be rejected, and the Poll Clerks must make a minute of the fact on the poll list. (Sec. 45.)

Protested Ballots.—At the close of the canvass the Poll Clerks must make memoranda on the tally sheets of the disputed and protested ballots. It is intended by the law that there should be a separate memorandum for each ballot, specifying the objections to it. It will, therefore, be necessary to number the protested ballots so that the objections may be referred to the proper ones by number. (Sec. 52.)

ELECTION SHERIFFS.

The County Sheriff must appoint two special deputies as Election Sheriffs for each precinct; one from each of the two leading political parties. The chairman of each of such political parties may, five days prior to the election, designate an Election Sheriff for each precinct, and if the person so appointed fails to appear the member or members of the Election Board of his political party shall appoint a person to act in his place. (Sec. 15.)

Attendance.—The Election Sheriffs must be at the polls when they open, and remain until the count is concluded. (Sec. 15.)

Arrests.—They must make arrests on the demand of any member of the Board (Secs. 15 and 45), and also on affidavit made before the inspector by any qualified voter that any person who has voted is not a legal voter. Persons thus arrested by Election Sheriffs should be promptly delivered by them to the nearest magistrate or court, where their cause may be speedily heard, and, if their offense be bailable, a bond may be given (Sec. 42.) In general, the Sheriffs must follow the directions of the Election Board.

Voter and Sheriffs.—It is the duty of Election Sheriffs to see that no more than three voters are permitted in the election room at the same time, and that all other persons are kept away for a distance of fifty feet. They should also assist infirm or decrepit people through the chute to and from the election room.

CHALLENGERS AND POLL BOOK HOLDERS.

One challenger and one poll book holder, appointed in writing by the local chairman of each party organization, are entitled to stand at the sides of the chute next the challenge window. (Sec. 15 and 41.)

Causes for Challenge.—Under a decision of the Supreme Court of Indiana, the provision with reference to registration has been held unconstitutional, and, therefore, this is not a cause for challenge. The following are the only causes for challenge: Bribery, buying votes, advising bribery, advising buying votes, selling one's vote or offering to sell one's vote, not having been a resident of the United States for one year or of the State six months, or of the township sixty days, or of the precinct thirty days immediately preceding the day of election, or being of foreign birth, not having been naturalized, or being less than twenty-one

years of age. (Sec. 41.) The naturalization of the parent whose children, on the parent's arrival in this country, were minors, naturalizes the minor children.

Mode of Challenging.—When a person is challenged he must stand aside, and can not vote unless he makes an affidavit that he is a legal voter. If he makes such affidavit, he is entitled to vote, unless the challenger or some other person makes affidavit that he is not a legal voter. The affidavit may be made on information or belief, but, if so, the person or persons who furnished the information must be named in the affidavit. The voter must then bring a qualified voter of the precinct as a witness, who must swear that of his own knowledge the claimant is a legal voter. Any false statement in any of these affidavits constitutes the crime of perjury. (Secs. 41 and 43.)

ELECTION BOARDS.

Election Boards are composed of an Inspector and two Judges representing the two leading political parties. (Secs. 3 and 4.) No person other than these three has any voice in determining any question arising for the Board's decision.

Nomination of Poll Clerks.—The first duty of Election Boards is the appointment of Poll Clerks, who must be qualified electors of the precinct and representatives of the two leading parties. If nominations have been made by the chairmen of these two parties, such nominees must be appointed. (Sec. 5.)

Oath of Office.—The next duty is taking the oath of office, in accordance with Sections 7, 8, 57 and 58. The law requires the Inspector and Judges to be qualified on the morning of election. If no person is present at the polling place authorized to administer oaths, the Inspector administers the oath to the two Judges and then one of the Judges administers the oath to the Inspector. The Inspector administers the oath to the two Polling Clerks. The Inspector then reads to the Judges Sections 57 and 58, and each member of the Election Board shall take an oath, as provided in Section 7.

Providing Ballots and Furniture.—In case, for any reason, the ballots or any necessary furniture for election be not on hand at the opening of the polls, the Board must supply them as speedily as possible. Ballots should be obtained from the person who was intrusted to bring them to the polling places, if possible; if not, then at the County Clerk's office; and if that be impracticable, the board must have them printed. (Sec. 38.)

Opening Ballot Packages.—After the organization of the Board the ballot packages must be opened by the Inspector in the presence of the Board without breaking the seals—in other words, cut the string and leave the seals on them. (Sec. 34.) The seals must be preserved and returned with the protested ballots. (Sec. 52.)

Opening the Polls.—When these duties have been performed and the Poll Clerks have marked their initials on the upper right hand corner of twenty-five State, local and township ballots (Sec. 34), the Inspector will, at the time of opening the polls, announce that the polls are opened.

In all cities and incorporated towns having a population of one thousand or more, and in precincts where the Board of County Commissioners at its June session preceding the election shall have so ordered upon the petition of twenty legal voters and householders, the poll shall be opened at 6 o'clock A. M. In all other precincts the polls shall be opened at 8 A. M. (Secs. 12 and 14.)

Ballot Boxes.—The ballot boxes must be opened and examined prior to announcing that the polls are opened. One key must be retained by the Inspector and the other key given to the Judge of the opposite politics to the Inspector. (Sec. 11.)

Right of Election Board to Challenge.—The right of any person offering to vote may be challenged by either challenger present or any member of the Election Board. (Sec. 41.)

Interpreters.—By unanimous consent of the Board an interpreter may be called to aid in instructing a voter (Sec. 45), but the interpreter has no right to stamp a ticket or see it stamped.

Balloting.—The Board has general supervision of the balloting and should not permit any violation of the law in its presence without the immediate arrest of the offender. No ballot may be put in the box by the Inspector if the manner in which it has been stamped has been shown to any person (Sec. 45), or mutilat-

ed, marked or defaced or if the initials of the Poll Clerks do not appear on it. (Sec. 49.)

Closing Polls.—The polls must not be kept open after 6 o'clock P. M., and must not be closed before 6 o'clock P. M., except that, by the unanimous consent of the entire Board, they may be closed after 4 o'clock: *Provided*, all the electors shall have voted, or fifteen minutes shall have elapsed without a vote having been tendered (Sec. 12). *It is provided, further*, that in cities having a population of one thousand or more the polls must be kept open until 6 o'clock P. M. The law does not permit the polls to remain open after 6 o'clock P. M., and no voter can be permitted to enter the room after that hour, but in case a voter has entered but has not voted when the hour of 6 arrives, his vote should be accepted. Upon the closing of the polls the Inspector must make a proclamation thereof, and a minute thereof of the time must be entered by the Clerks on the tally papers.

Destruction of Unvoted Ballots.—Immediately on closing the polls the Board shall count the ballots, State, local and township, remaining unvoted, record the number of the same on the tally sheet, and destroy all such ballots by totally consuming by fire. (Sec. 51.)

Canvassing the Votes.—The Board must proceed first to canvass the State ballots; second, to canvass the local ballots; and third, to canvass the township ballots. There appears no reason why the ballots should not be separated into "straight" and "scratched" when taken from the box, as is ordinarily done to facilitate counting. If any ballots are found to be mutilated, defaced or marked so that they can be identified, they must not be counted (Sec. 52), but Election Boards should not adhere to such a severe construction of the law as will deprive innocent and honest voters of their rights, and, in determining the intention of the voter, a careful but common sense discretion should be exercised. Instances may arise where ink from the stamp used by the voter, not being sufficiently dry may leave a slight mark or blur in folding the ballot; or finger marks from a greasy or soiled hand may be unintentionally left upon the ballot. In such case, if the Board, after a careful examination, is convinced that such marks were accidentally and not intentionally or corruptly made, the ballot should be counted. If the initials are in the upper left-hand corner instead of the upper right-hand corner, as required by law, and this clearly appears to have been an honest and unintentional mistake of the Poll Clerks, the ballot should nevertheless be counted. (*Parvin v. Wimberg*, 130 Ind. 561.) No ballot should be counted, however, if the intention of the voter is not indicated by the stamp mark and in the exact manner provided by the Statute. (Secs. 52 and 62.) The unprotested ballots should be strung on a twine as fast as they are counted (Acts of 1885, page 153) and totally destroyed by fire as soon as the count has been completed and the certificates made up. A ballot that is disputed must be preserved and returned to the County Clerk's office in the proper package, unless the Board finally and unanimously agree that it should be counted, in which case it should be tallied and destroyed as other undisputed ballots, or unless the Board finally and unanimously agree that it should not be counted, in which case it should not be counted, but, though not protested or disputed, must be preserved with other marked, mutilated or defective ballots, and put in the package with those which are disputed or protested. As to numbering and keeping a memorandum of protested votes, see under "Duties of Poll Clerks."

Ballot in Wrong Box.—If the Inspector, by mistake or intention, deposits genuine ballots in the wrong box, putting State ballots in the local box, or local ballots in the State box, such ballots should be counted. (Decision of the Supreme Court of Indiana in the case of *Parvin v. Wimberg*, 130 Ind. 561.)

Close of the Count.—The Board must canvass the ballots, and after such canvass has been completed the result must be recorded on the tally sheets, and separate certificates made of the number of votes for each candidate upon the ballots, State, local and township, over the signatures of all the members of the Board.

The Board must then burn all the voted ballots, State, local and township, except those protested, disputed or defective, and make separate memoranda of the number of votes cast for each candidate, a copy of which must be delivered to each member of the Board.

The disputed, protested or defective ballots must be preserved and returned to the County Clerk's office in the sealed bags.

A paper sack is provided in which the seals of the ballot packages and all the

disputed, protested or defective ballots shall be placed, and this paper bag, when sealed, must be delivered to the County Clerk.

Effect of Protest.—A protest does not, in any sense, mean that the ballot shall not be counted. It must be counted, notwithstanding the protest, if a majority of the Board so decide, and the only persons to decide are the Inspector and the two Judges.

Prohibited Acts.—It is punishable by fine and imprisonment for any election officer to electioneer (Sec. 60); to mark any ticket, or endeavor to ascertain how it is stamped, to permit any ballots to be taken away (Sec. 31); or permit any ballots to be opened, removed or destroyed (Sec. 54); to disclose how any voter has voted (Sec. 60); to mark or mutilate any ballots (Act 1891, p. 133); or to neglect to perform any duty, or in any way violate the election laws (Sec. 61).

It is punishable with fine and imprisonment for any person to remove any ballot or stamp from the election room, or even to have a genuine ballot in his possession (Secs. 32 and 50); to counterfeit (Sec. 53) or tamper with the ballots (Sec. 54); to remove or destroy any election supplies or conveniences (Sec. 59); to wrongfully enter the election room (Sec. 55); or to induce or attempt to induce any elector to mark or mutilate his ballot (Sec. 56); or induce or attempt to induce any election officer to violate his duty (Sec. 58).

Meals.—The election Board of each precinct must be furnished with good, plain and substantial meals, at the regular hours for meals, during election day and until the count is finished, but no spirituous, vinous or fermented liquors shall be furnished. The Inspector of the Election Board should see that these meals are provided. (Sec. 4709.) The election officers of each Election Board who are entitled to receive meals are the Inspector, two Judges, the two Poll Clerks and the two Sheriffs, and no others. The Inspector should also see that the room is comfortable, such as furnishing fuel and lights.

Disposition of Papers.—The various papers and documents used by the Board must be disposed as follows:

(a) The count being completed, the Board must place in a paper bag or envelope, to be furnished for that purpose, all affidavits made and taken during the progress of the election, which bag or envelope must be securely sealed by the Board. Each member of the board (Inspector and two Judges) must indorse his name on the back of such bag or envelope, which must be directed to the Clerk of the county, to whom the Inspector must deliver such bag or envelope within three days after the day of election. (Sec. 63.)

(b) All protested, disputed or defective State, local and township ballots preserved from destruction must be put in another bag furnished for that purpose, together with the seals of the ballot packages, in the same condition as they were when the packages were opened at the beginning of the election. The Inspector must seal this bag with wax and indorse thereon the number of ballots therein, and the condition of the seals of the ballot packages, with the name of the township and the number of precincts, and such Inspector shall deliver the same at the earliest possible period to the Clerk of the county. (Sec. 52.)

(c) In a third bag must be placed one of the lists of voters kept by the Poll Clerk, and one State, one local and one township tally sheet, which bag must be tightly closed and sealed with wax by the Inspector in the presence of the Judges, and the Inspector must deliver the same to the County Clerk on or before 10 o'clock A. M. on the Thursday next succeeding the day of election, and make the affidavit required by Section 1713 of the Revised Statutes of 1881.

(d) The certificate of the result of the election, with the remaining tally sheets and poll list, must be deposited with the Inspector, or with one of the Judges selected by the Board of Judges (Secs. 4712 and 4715), who must have the same at the Court House on or before 10 o'clock A. M. on the Thursday next succeeding the day of election, to take part in the general canvass of the votes. (Sec. 4715.) In no event should the Inspector or Judge, who has been selected as custodian of these outside papers, part with their possession or permit them to be changed, handled or mutilated. (Sec. 4713.)

(e) The certificate of the result of the election of township officers, together with one of the township tally sheets, and the poll list retained by the Inspector, should be taken by him to the office of the Township Trustee at 10 o'clock A. M. on the Wednesday next succeeding the day of election, these to be used in the canvass of the vote for township officers. The poll-list being the same which is to be used by such Inspector at the canvass to be made on the Thursday next succeeding the day of the election, at the County Clerk's office. Great care

should be exercised that such poll-list be retained by him after the canvass of the vote for township officers, and presented by him at the time above named for use at such canvass.

BOARD OF CANVASSERS.

Votes for Township Officers—When, Where and How Canvassed.—The votes for township officers, where there are but one precinct in the township, are canvassed by the Board of Election, after the polls are closed, on the day of election, and the result certified accordingly; but in all townships where there are more than one precinct the Inspectors of the several precincts, or the Judge of Election to whom the certificates, poll books or tally papers are delivered, shall constitute a Board of Canvassers, who shall meet on the day following the election (Wednesday, November 7, 1894) at the office of the Township Trustee at as near 10 o'clock A. M. as practicable, and organize by electing one of their number as chairman and one as clerk, and compare the certificates, poll books and tally papers, aggregate the vote, and declare and certify the result; and if two or more persons have the highest and an equal number of votes for the same office they shall determine by lot which shall be elected and give a certificate accordingly. (Sections 4736 and 4737, Revised Statutes, 1881.)

Votes for all Officers Other Than Township Officers—When, Where and How Canvassed.—The Inspectors of the several precincts of the county, or the Judges of elections to whom the certificates, poll books and tally papers shall have been delivered, shall constitute a board of canvassers, who shall canvass and estimate the certificates, poll books and tally papers of each member of the Board. They shall meet between the hours of 10 o'clock A. M. and 6 o'clock P. M. at the court house (Circuit Court room) on the Thursday following the day of election (November 8, 1894), and shall elect one of their number as Chairman, and the Clerk of the Circuit Court shall act as their Clerk. (Sections 4715 and 4716, Revised Statutes, 1881.) Such Board, when organized, shall carefully compare and examine the papers intrusted to them, and aggregate and tabulate from them the votes of the county, a statement of which shall be drawn up by the Clerk, and signed by each member of said Board, and which canvass sheet, together with the certificates, poll books and tally papers shall be delivered to the Clerk, and by him filed in his office. (Sec. 4717, R. S. 1881.)

Such Board shall declare the person having the highest number of votes for any office to be filled by the voters of a single county, duly elected to such office, and certify the same in the statement above required. (Sec. 4718, R. S. 1881.)

If two or more persons shall have the highest and an equal number of votes for the same office, to be filled by the voters of a single county, such Board shall forthwith declare that no person is elected to fill such office, and shall certify the same in their statement. (Sec. 4719, R. S. 1881.)

No tally paper, poll book or certificate returned by any Election Board shall be rejected for want of form, if the same can be satisfactorily understood, and in no case shall such Board of Canvassers reject the returns from any precinct if the same is certified by the Board of Election of that precinct, as required by law, and presented by the Inspector or one of the Judges of said Board. (Sec. 4720, R. S. 1881.)

The acts of the Board of Canvassers are ministerial. The canvass must be made from the face of the tally papers, poll books and certificates, made by the Inspectors, Judges and Clerks, and it is improper for the Board of Canvassers to hear testimony touching irregularities at the polls. Returns which fail to state what offices parties named are voted for are void for uncertainty, and it is the duty of the Board of Canvassers to reject them. (*Moore v Kessler*, 59 Ind., 152.)

The certificates of the votes cast for the candidates on the State, local and township ballots, all being on the poll book, the Inspector or Judge attending the canvass of the vote cast for township officers must take with him the poll book not sealed in the bag, and the township tally paper. He must leave the township tally paper with the Township Trustee, but must not leave his poll book with the Trustee, but must take it with him to the court house on the Thursday after the day of election, to canvass the votes cast for the State and local candidates.

The canvass of votes will be greatly facilitated if election officers see that the certificates and returns are all properly made out and the proper disposition made of the papers.

If the papers necessary to make the canvass of the vote of any precinct have been sealed up in the bag, the Inspector or Judge of that precinct should open the bag in the presence of the Board of Canvassers, and the vote of that precinct canvassed. The bag should then be properly sealed up in the presence of said Board. (Sec. 4714, R. S. 1881.)

THE ELECTION LAWS.

PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES.

4. (4.) Elections.—4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Congress may make rules for the election of members of Congress, and may prescribe duties for officers acting under state laws, and prescribe penalties for such acts of Congress.

Ex parte Siebold, 100 U. S. 371; *In re Coy*, 127 U. S. 731; *Ex parte Yarbrough*, 110 U. S. 651.

44. (44.) The rights of voters.—1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

45. (45.) How enforced.—2. The Congress shall have power to enforce this article by appropriate legislation.

The 15th amendment does not confer the right of suffrage, but prevents the states from discriminating on account of race, color or previous condition of servitude. *United States v. Reese*, 92 U. S. 214; *Ex parte Yarbrough*, 110 U. S. 651.

The 15th amendment has the effect of striking out of state constitutions the words "white race," when used as a qualification of voters. *Neal v. Delaware*, 103 U. S. 370.

PROVISIONS OF THE CONSTITUTION OF THE STATE OF INDIANA.

83. (83.) Elections free.—1. All elections shall be free and equal.

84. (84.) Qualifications of electors.—2. In all elections not otherwise provided for in this constitution, every male citizen of the United States, of the age of twenty-one years and upward, who shall have resided in the state during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election, and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this state during the six months, and in the township sixty days, and in the ward or precinct thirty days, immediately

preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization, shall be entitled to vote in the township or precinct where he may reside, if he shall have been duly registered according to law. [As amended March 14, 1881.]

The legislature can not change the qualification of voters as fixed by the constitution. *Morris v. Powell*, 125 Ind. 281.

85. (85.) Soldiers—Seamen—Marines.—3. No soldier, seaman, or marine, in the army or navy of the United States, or of their allies, shall be deemed to have acquired a residence in the state, in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine have the right to vote.

86. (86.) Residence.—4. No person shall be deemed to have lost his residence in the state by reason of his absence, either on business of his state or of the United States.

Section 13 of the act of 1889, requiring voters absenting themselves from the state to do certain things to retain their residence is invalid. *Morris v. Powell*, 125 Ind. 281.

Section 5 of this article was abrogated by an amendment adopted March 14th, 1881, in pursuance of the act of February 21, 1881.

89. (89.) Disfranchisement.—8. The general assembly shall have power to deprive of the right of suffrage, and to render ineligible any person convicted of an infamous crime.

93. (93.) Electors free from arrest.—12. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same.

If a person is arrested when he is free from arrest, he may be discharged on a writ of *habeas corpus*. *Crocker v. Duncan*, 6 Blkf. 278.

94. (94.) Method of election.—13. All elections by the people shall be by ballot; and all elections by the general assembly, or by either branch thereof shall be *viva voce*.

A statute requiring the numbering of ballots is unconstitutional. *William v. Stein*, 38 Ind. 89.

It may be provided that in case of a tie vote that the result shall be determined by lot. *Johnston v. State, ex rel.*, 128 Ind. 16.

95. (95.) Time of elections.—14. All general elections shall be held on the first Tuesday after the first Monday in November; but township elections may be held at such time as may be provided by law: *Provided*, That the general assembly may provide by law for the election of all judges of courts of general and appellate jurisdiction by an election to be held for such officers only, at which time no other officers shall be voted for; and shall also provide for the registration of all persons entitled to vote. [As amended March 14, 1881.]

Courts take notice of the time of general elections. *Hizer v. State*, 12 Ind. 330.

The legislature can not require that a certain class of voters only shall be registered as a prerequisite of the right to vote. *Morris v. Powell*, 125 Ind. 281.

INDIANA STATUTES.

CRIMES.

2194. (2098.) **Selling liquor on Sunday, etc.**—190. Whoever shall sell, barter, or give away to be drunk as a beverage, any spirituous, vinous, malt or other intoxicating liquor, upon Sunday, the fourth day of July, the first day of January, the twenty-fifth day of December (commonly called Christmas day), Thanksgiving day as designated by proclamation of the governor of this state or the President of the United States, or any legal holiday; or upon the day of any election in the township, town, or city where the same may be holden; or between the hours of eleven o'clock P. M. and five o'clock A. M.,—shall be fined in any sum not more than fifty dollars nor less than ten dollars, to which may be added imprisonment in the county jail not more than sixty days nor less than ten days.

An indictment for selling liquors on Sunday must charge that the liquors were sold to be drunk as a beverage. *Morel v. State*, 89 Ind. 275; *Dowdell v. State*, 58 Ind. 333.

Indictments for selling liquors on Sunday should state the date of the sale. *Clark v. State*, 34 Ind. 436; *State v. Land*, 42 Ind. 311; *Ruge v. State*, 62 Ind. 388.

The indictment should allege that the day on which the sale was made was commonly called Sunday, giving a date which was Sunday being insufficient. *Gilbert v. State*, 81 Ind. 565.

If it is alleged that the date given is Sunday, the indictment will be good though such date is not Sunday. *Roy v. State*, 91 Ind. 417.

Stating that a sale was made on Sunday, "on or about" a given date, is insufficient. *Effinger v. State*, 47 Ind. 235.

The sale need not be proven to have been made on the particular Sunday alleged, but may be proven to have been on any Sunday not barred by the statute of limitations. *Pancake v. State*, 81 Ind. 93; *Buckner v. State*, 56 Ind. 207.

If the liquors sold on Sunday are ordinarily used as a beverage, it may be inferred that they were sold for such purpose. *Morel v. State*, 89 Ind. 275.

Prosecutions for selling intoxicating liquors on Sunday may be commenced within two years after the commission of the offense. *Shepler v. State*, 114 Ind. 194.

On a charge of sale of intoxicating liquors there must be proof that the liquors were intoxicating, unless the court takes judicial knowledge thereof, or the liquors are such as the statute declares to be intoxicating. *Josephdaffer v. State*, 32 Ind. 402; *Weis v. State*, 33 Ind. 204; *Plunkett v. State*, 69 Ind. 68; *Kurz v. State*, 79 Ind. 438; *Myers v. State*, 93 Ind. 251; *Fenton v. State*, 100 Ind. 598; *Welsh v. State*, 123 Ind. 71.

Courts judicially take notice that whisky, ale, brandy, beer and all malt liquors are intoxicating. *Camon v. State*, 18 Ind. 450; *Eagan v. State*, 53 Ind. 162; *Schlicht v. State*, 56 Ind. 173; *Wiles v. State*, 33 Ind. 206; *Shaw v. State*, 56 Ind. 188; *Myers v. State*, 93 Ind. 251; *Fenton v. State*, 100 Ind. 598.

As to the formation of clubs, purchase and distribution of liquors to avoid the statute prohibiting sales on Sunday, see *Marmont v. State*, 48 Ind. 21.

An indictment for selling liquors on an election day should name the township in which the sale was made and the election held. *State v. Weaver*, 83 Ind. 542.

Selling intoxicating liquors on the day of a primary election is prohibited by this section. *State v. Christman*, 67 Ind. 323; *State v. Hirsch*, 125 Ind. 207.

It is unlawful to sell intoxicating liquors on the day of any general or special city election. *State v. Kidd*, 74 Ind. 554; *Qualter v. State*, 120 Ind. 92.

The statute prohibiting the sale of liquors between certain hours is constitutional, and applies to licensed sellers. *Hunter v. State*, 101 Ind. 241.

Courts judicially know that between the hours of eleven o'clock P. M. and 5 o'clock A. M. means from eleven o'clock at night to five o'clock the next morning. *Heddrick v. State*, 101 Ind. 564.

When different sales on the same day constitute separate offenses, and the evidence discloses more than one sale, the State will be required to elect which sale to rely upon. *Lebkovitz v. State*, 113 Ind. 26.

2195. (2099) Druggist selling liquor on Sunday, etc.—191. It shall be unlawful for any druggist or druggist's clerk to sell, barter, or give away any spirituous, vinous, malt or other intoxicating liquor on Sunday; or upon the fourth day of July, the first day of January, the twenty-fifth day of December (commonly called Christmas), Thanksgiving day, or any legal holiday; or upon the day of any state, county, township, primary, or municipal election in the township, town or city where the same may be holden; or between the hours of eleven o'clock P. M. and five o'clock A. M. of any day, unless the person, to whom the same is sold, bartered, or given shall have first procured a written prescription therefor from some regularly practicing physician of the county where the same is so sold, bartered, or given away. And a person so offending shall be fined in any sum not more than fifty dollars nor less than ten dollars, to which may be added imprisonment in the county jail not more than sixty days nor less than ten days.

An indictment under this section charging a sale on Sunday must allege that the day on which the sale was made was Sunday, naming a day of the month that was Sunday not being sufficient. *Shepler v. State*, 114 Ind. 194.

Druggists can not sell liquors on Sunday without a prescription from a physician, although the liquors may be sold and used for medical purposes. *Barton v. State*, 99 Ind. 89; *Tilford v. State*, 109 Ind. 359.

The prescription from a physician must be explicit in its terms, and have reference to be filled on Sunday, to justify a druggist in selling liquors on that day. *Edwards v. State*, 121 Ind. 450.

If a druggist is a physician, he can not sell liquors on Sunday without a written prescription. *Tilford v. State*, 109 Ind. 359.

All sales of liquors on Sunday being presumed illegal, the burden is on the seller to show that he was justified in making the sale. *Edwards v. State*, 121 Ind. 450.

Prosecutions for a violation of this section are not barred until two years after the commission of the offense. *Shepler v. State*, 114 Ind. 194.

ARTICLE 9.—AGAINST PURITY OF ELECTIONS.

- SEC.
 2322. Illegal Voter.
 2323. Voting in wrong precinct.
 2324. Non-resident voting.
 2325. Importing voters.
 2326. Voting more than once.
 2327. Bribery for nomination—Penalty.
 2328. Bribery of elector—Penalty.
 2329. Seeking to influence voters.
 2330. Influencing voter to refrain from voting.
 2331. Ground of challenge—Affidavit.
 2332. False affidavit.
 2333. Breaking ballot-box.
 2334. Fraud by officer.

- SEC.
 2335. Altering returns.
 2336. Refusing to receive vote.
 2337. Officer persuading voter.
 2338. Officer opening or marking ticket.
 2339. Deceiving illiterate voter.
 2340. Defrauding voter.
 2341. Using violence, threats or restraint.
 2342. Seizing ballot-box.
 2343. Destroying ballot-box or ballots.
 2344. Inducing voter to resign petition.
 2345. Selling signature to petition.
 2346. Fraud at special election.
 2347. Buying vote at special election.
 2348. Bribing to procure election.

[1881 S., p. 174. In force September 19, 1881.]

2322. (2179.) Illegal voter.—263. Whoever, not having the legal qualifications of a voter at any election authorized by law to be held in this state for any officer whatever, votes or offers to vote at such election, shall be fined not more than five hundred dollars nor less than ten dollars, imprisoned in the county jail not more than one year nor less than one month, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

An indictment for voting without having the qualifications of a voter, must specify what qualifications were wanting. *Quinn v. State*, 35 Ind. 485.

The decision of the judges of an election in favor of the right of a person to vote, is no defense to an action for illegal voting. *Morris v. State*, 7 Blkf. 607.

The defendant can not prove the statements made by himself at the polls when he offered to vote. *Morris v. State*, 7 Blkf. 607.

The residence of a person is governed very largely by his intention, and in order to lose a residence there must be a removal without an intention to return for the purpose of residing. *Culbertson v. Board*, 52 Ind. 361; *Maddox v. State*, 32 Ind. 111.

If an intention to reside at a place is followed by a removal, a residence at such place is acquired although the person intends to reside there for a limited time only. *Pedigo v. Grimes*, 113 Ind. 148.

The qualification of voters as defined by the constitution can not be added to nor changed by legislative enactment. *Morris v. Powell*, 125 Ind. 281.

One class of voters can not be required to register in order to be entitled to vote, when other voters are not required to be registered. *Morris v. Powell*, 125 Ind. 281.

2323. (2180.) Voting in wrong precinct.—264. Whoever knowingly votes, or offers to vote, in any precinct or ward except the one in which he resides, shall be fined not more than five hundred dollars nor less than ten dollars, imprisoned in the county jail not more than one year nor less than one month, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2324. (2181.) Non-resident voting.—265. Whoever passes from any other state into this state, and votes or attempts to vote at any voting precinct or ward of this state, not being at the time a *bona fide* resident of such voting precinct or ward, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2325. (2182.) Importing voters.—266. Whoever hires or solicits any person to come from any state into this state for the purpose of voting at any election therein, or to pass from any county to another county, or from any township into another township, or from any voting precinct or ward into another voting precinct or ward of the state, for the purpose of voting therein at any election held therein (such person, so solicited, not being a legal voter in such county, township, precinct, or ward), shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised

and rendered incapable of holding any office of trust or profit for any determinate period.

2326. (2183.) Voting more than once.—267. Whoever votes more than once at any election in this state, either at the same precinct or ward or at different precincts or wards, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

As to the sufficiency of an indictment under this section, see *State v. Patterson*, 116 Ind. 45.

Sections 2184 and 2185, R. S. 1881, were repealed by section 4 of act of March, 1885, Acts 1885, p. 93; Ell. Supp., section 317; and new provisions were enacted on the subject of buying and selling votes. By section 7 of the act of March, 1889, Acts 1889, p. 267, Ell. Supp., sections 319-326, sections 1, 2, 3 and 5 of the act of March, 1885, were repealed, and new provisions were enacted which follow.

[Acts 1889, p. 267. In force May 10, 1889.]

2327. (E. S. 319.) Bribery for nomination—Penalty.—1. Any person being a candidate for nomination to any office of profit or trust under the constitution or laws of this state, or of the United States, before any convention held by any political party, or at any primary election, who loans, pays, or gives, or promises to loan, pay or give any money or other thing of value to any delegate or elector or any other person, for the purpose of securing the vote or influence of such delegate, elector, or person, for his nomination, and whoever hires or otherwise employs for consideration any person to work for the nomination of any person to any office, or to work for the selection of any delegate to be chosen at any party convention or primary election, shall, upon conviction thereof, be fined in any sum not more than five hundred dollars, and disfranchised and rendered incapable of holding any office of profit or trust within this state for any determinate period, and if nominated shall be ineligible to hold such office.

2328. (E. S. 320.) Bribery of elector—Penalty.—2. Whoever, being a candidate for any office, loans or gives directly or indirectly, or offers or promises to loan or give any money or other thing of value to any elector for the purpose of influencing or retaining the vote of such elector, or to induce such elector to work or labor for the election of such candidate, or to refrain from working or laboring for the election of any other candidate, or to any person to secure or to retain the influence or vote of such elector in his behalf as such candidate, or to be used by such person in any way to influence the vote of any elector, or of electors generally, for himself or any candidate or ticket, and whoever hires or otherwise employs for consideration any person to work at the polls on election day for the election of any candidate to be voted for at such election, shall be fined in any sum not more than one thousand nor less than three hundred dollars, and shall be disfranchised and rendered incapable of holding any office of profit or trust within this state for any determinate period, and a violation of

any provision of this section by any person elected to such office shall render his election void, and if he has taken the office, upon conviction, shall operate as a vacation of the same.

See section 2347.

It is held that the mere "treating" of voters is not a criminal offense. *Heilman v. Shanklin*, 60 Ind. 424.

2329. (E. S. 321.) Seeking to influence voters.—3. Any person who shall give or offer to give, directly or indirectly, any money, property or other thing of value, to any elector to influence his vote at any regular election held in this state pursuant to law, or who shall, at any such election, solicit, furnish or receive any money or other means for such purpose, or who shall aid, advise, counsel or suggest to any person, or to persons generally, to use or procure any money or other means to be used to induce, hire, or buy any person or persons to vote or refrain from voting for any candidate or candidates or to remain away from the polls at any election, whether or not any such person shall act or attempt to act upon any such counsel, advice or suggestion, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars and not more than one hundred dollars, and imprisoned in the county jail not less than ten days nor more than six months, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period, not less than ten years, or imprisoned in the state's prison at hard labor not less than one nor more than five years, and disfranchised and rendered incapable of holding any office of profit or trust for the period aforesaid.

2330. (E. S. 322.) Influencing elector to refrain from voting.—4. Any person who shall directly or indirectly give, offer or promise to give to any elector any money, property or other thing of value for the purpose of preventing, influencing, inducing or procuring such elector to refrain from voting, or to remain away from the polls at any election held under the laws of this state, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than twenty-five dollars or more than five hundred dollars and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period, not less than ten years; to which may be added imprisonment in the county jail for any period not to exceed six months.

2331. (E. S. 323.) Ground of challenge—Affidavit.—5. At any election held under and pursuant to any law of this state, it shall be a ground of challenge that any person offering to vote has used or attempted to use money or other means to buy, hire, or induce any elector to vote or refrain from voting for any candidate or candidates, or has advised, counseled or suggested bribery of any elector or electors at any such election, whether the same has been acted on or not, or has sold or offered to sell his vote for any candidate or candidates, at any such election. And when so challenged, such elector shall not be permitted to vote until he has taken and subscribed the following: State

of Indiana, ——— county, ss.: I, ———, do solemnly swear (or affirm) that I have not used or attempted to use any money or other means to buy, hire or induce any person or persons to vote or refrain from voting or to remain away from the polls at this election; and that I have not counseled, advised, suggested, or procured any person or persons to bribe any elector or electors to vote for any candidate or candidates, or to refrain from voting or to remain away from the polls at this election, and that I have not sold or offered to sell my vote, either directly or indirectly, at this election.

Subscribed and sworn to before me, this ——— day of ———, 18—.

2332. (E. S. 324.) False affidavit.—6. Whoever shall willfully or knowingly make a false affidavit under this act shall be guilty of perjury and punished accordingly. All affidavits made under the preceding sections shall be filed with the board of election and preserved by such board in the manner as other similar affidavits and papers are preserved.

Section 7 repeals sections 1, 2, 3 and 5 of the act of March, 1885, Acts 1885, p. 93.

2333. (E. S. 326.) Breaking ballot-box—Altering returns.—8. Any person not duly authorized by law who shall, during the progress of any election in this state, or after the closing of the polls and before the ballots are counted and result ascertained, or within six months thereafter, break open or violate the seals or locks of any ballot-box, paper envelope or bag in which ballots have been deposited at or after such election, or who shall obtain possession of such ballot-box, paper envelope or bag containing such ballots, and cancel, withhold or destroy the same, or who shall fraudulently or forcibly add to or diminish the number of ballots legally deposited therein, or who shall fraudulently make any erasure or alteration of any kind upon any tally-sheet, poll-book, list of voters or election return deposited therein, shall be fined in any sum not more than one thousand nor less than five hundred dollars, and imprisoned in the state prison not more than ten nor less than two years, and disfranchised and rendered incapable of holding any office of profit or trust in this state for any determinate period.

[1881 S., p. 174. In force September 19, 1881.]

2334. (2186.) Fraud by officer.—270. Whoever, being a township trustee, inspector, judge of election, or clerk of election, takes out of the ballot-box any ballot legally deposited therein, for the purpose of destroying the same or substituting another in its place, or after the same has been legally taken out, intentionally destroys or misplaces the same with the intent to substitute another ballot therefor, or with the intent to prevent the same from being counted at such election; or knowingly enters upon the poll-books the name of any person who has not legally voted at such election; or intentionally tallies any vote to any candidate not voted for by such ballot; or permits any one of these acts to be done,—shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state

prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2335. (2187.) Altering returns.—271. Any township trustee, inspector, or any person acting for or on behalf of any trustee or inspector while forming a board of canvassers or before the canvassing of any board of canvassers or after the adjournment of any board of canvassers, who shall, with intent to cheat and defraud, alter an election return as made by the election board of any voting precinct, either by increasing the vote of any candidate or reducing the same; or shall intentionally destroy, misplace, or lose any poll-book or tally-sheet; or any clerk of court, who shall, with intent to cheat and defraud, change or alter in any way the vote of any candidate as returned by the board of canvassers; or any such trustee, inspector, clerk, or deputy clerk, or other person acting for such persons, who shall consent to the same being done, or who shall permit the same to be done, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2336. (2188.) Refusing to receive vote.—272. Whoever, being an inspector or judge of any election held within this state, knowingly and willfully, or corruptly, refuses or neglects to receive the vote of any legal voter at any election held within this state, shall be fined not more than five hundred dollars nor less than fifty dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

An indictment for refusing to receive a vote must show the purpose for which the election was held. *Tipton v. State*, 27 Ind. 492.

When a voter complies with the law regulating his right to vote, the officers of the election are liable for not receiving his vote unless he was not a legal voter. *State v. Robb*, 17 Ind. 536.

If a voter is challenged his vote may be rejected until he complies with the law relative to challenged voters. *State v. Tuibell*, 26 Ind. 264.

2337. (2189.) Officer persuading voter.—273. Whoever, being an inspector, judge, or clerk of an election, attempts to induce, by persuasion, menace, or reward, or promise thereof, any elector to vote for any person, shall be fined not more than one hundred dollars nor less than ten dollars.

2338. (2190.) Officer opening or marking ticket.—274. Whoever, being a judge, inspector, clerk, or other officer of an election, opens or marks, by folding or otherwise, any ticket presented by such elector at such election; or attempts to find out the names thereon; or suffers the same to be done by any other person, before such ticket is deposited in the ballot-box,—shall be fined in any sum not more than one hundred dollars nor less than ten dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2339. (2191.) Deceiving illiterate voter.—275. Whoever furnishes an elector who can not read the English language, at any election held pursuant to law, with a ticket which such person shall represent to such elector as containing a name different from the one printed or written thereon, shall be fined not more than one hundred dollars nor less than ten dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2340. (2192.) Defrauding voter.—276. Whoever fraudulently causes or attempts to cause any elector, at any election held pursuant to law in this state, to vote for a person different from the one he intended to vote for, shall be fined not more than one hundred dollars nor less than ten dollars.

2341. (2193.) Using violence, threats or restraint.—277. Whoever, for the purpose of influencing a voter, seeks, by violence or threats of violence or threats to enforce the payment of a debt; or to eject or threatens to eject from any house he may occupy; or begin a criminal prosecution; or to injure the business or trade of an elector; or, if an employer of laborers or an agent of such employer, threatens to withhold the wages of or to dismiss from service any laborer in his employment; or refuses to allow to any such employe time to attend at the place of election and vote,—shall be fined not more than one thousand dollars nor less than twenty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2342. (2194.) Seizing ballot-box.—278. Whoever, at any election, unlawfully, either by force, fraud, or other improper means, obtains or attempts to obtain possession of any ballot-box or any ballots therein deposited, while the voting at such election is going on or before the ballots are duly taken out of such ballot-box and counted by the election board according to law, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2343. (2195.) Destroying ballot-box or ballots.—279. Whoever unlawfully destroys or attempts to destroy any ballot-box used, or any ballot or vote deposited, or any poll-book kept at any election, shall be fined not more than one thousand dollars nor less than fifty dollars, imprisoned in the state prison not more than five years nor less than one year, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2344. (2196.) Inducing voter to re-sign petition.—280. Whoever, by persuasion, menace, or reward, or promise thereof, induces or attempts to induce any legal voter of any county to re-sign any written or printed petition for the re-location of the county seat of any county or any remonstrance against such re-location, shall be fined not more than five hundred dollars nor less than ten dollars, to which may be

added imprisonment in the county jail not more than six months nor less than ten days, and he shall be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2345. (2197.) Selling signature to petition.—281. Whoever, being a legal voter of any county, sells or barter or offers to sell or barter for money, property, or thing of value, or for any promise or hope of reward, given or offered by any person, his signature to any written petition for the re-location of any county seat, or to any remonstrance against such re-location, shall be fined not more than five hundred dollars nor less than ten dollars, to which may be added imprisonment in the county jail not more than six months nor less than ten days, and he shall be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period.

2346. (2198.) Fraud at special election.—282. Whoever votes more than once at any election for the re-location of any county-seat, or for aid to any railroad, either at the same precinct or at different precincts, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not more than fifty dollars nor less than ten dollars.

2347. (2199.) Buying vote at special election.—283. Whoever buys or offers to buy, either by himself or by any other person, or furnishes any money or any other means to be used, or who shall permit his money or other means to be used, to hire, buy, or induce any person to vote for or against the removal of a county seat, or for or against the appropriation of aid to any railroad; or whoever attempts to induce any person to vote for or against such removal or appropriation, by offering any reward or favor—shall be deemed guilty of a misdemeanor. And whoever, being a voter of this state, sells or barter or offers to sell or barter, for any money or property, or any thing of value, or any promise or hope of reward given or offered by any person or persons, his vote for the removal or for the re-location of a county seat, or against such removal or re-location, or against such appropriation or in favor of such appropriation for said railroad, shall be deemed guilty of a misdemeanor. And, upon conviction of violating any of the provisions of this section, the person so offending shall be fined in any sum not more than one hundred dollars nor less than twenty-five dollars, and disfranchised and rendered incapable of holding any office of trust or profit for any determinate period not exceeding five years.

2348. (2200.) Bribing to procure election.—284. Whoever gives or offers a bribe, threat or reward to procure his election to any office under the constitution or laws of this state, shall be fined not more than one thousand dollars nor less than fifty dollars, and imprisoned in the state prison not more than five years nor less than one year; and such person so offending, if elected to such office, shall be disqualified from holding office during the term for which he may have been elected, and also disfranchised for any determinate period.

ELECTIONS.

ART.

1. GENERAL ELECTIONS.
2. SPECIAL ELECTIONS.
3. TOWNSHIP ELECTIONS.

ART.

4. RECOUNTING.
5. CONTEST.
6. BRIBERY OF ELECTORS.

ARTICLE 1.—GENERAL ELECTIONS.

SEC.

6190. When held—What offices filled.
6191. Certificate of clerk—Notice of sheriff.
6192. Qualifications of electors.
6193. Who disfranchised.
6194. Soldiers, seamen and marines.
6195. Residence.
6196. Elector's freedom from arrest.
6197. Betting on election.
6198. Precincts—Number of voters.
6199. Boundaries of precinct—Change.
6200. Officers of election.
6201. Inspectors—Election board.
6202. Poll clerks.
6203. Forms.
6204. Oath of officers.
6205. Who shall administer oath.
6206. Inspector's duties.
6207. Ballot boxes.
6208. Inspector of ballot boxes—Keys.
6209. Opening and closing election.
6210. Where to vote.
6211. Proclamation of opening.
6212. Election sheriffs.
6213. State board of election commissioners.
6214. County board of election commissioners.
6215. Duties of board.
6216. Petitions of nomination.
6217. Petitions and certificates to be preserved.
6218. When to be filed.
6219. Certificate of governor.
6220. Declination of nominees.
6221. Proposed constitutional amendment.

SEC.

6222. Form of ballot.
6223. Nomination to fill vacancy.
6224. Printer—Felony.
6225. Distributing ballots.
6226. Allowance to clerk—Special messenger.
6227. Permitting ballots to be taken—Felony.
6228. Removing ballots—Felony.
6229. Delivery of ballots.
6230. Opening sealed ballots—Poll Clerks.
6231. Duties of county board—Instructions to voters.
6232. Special messenger.
6233. Inspector failing to appear.
6234. Loss of ballots.
6235. Preserving and destroying ballots left over.
6236. Room for holding election.
6237. Who may stand near polls—Challengers—Voting—Swearing in.
6238. Arrest of illegal voter.
6239. False affidavit—Perjury.
6240. Work limited on election day.
6241. Manner of voting.
6242. Paster ballots.
6243. Number in booths—Mutilation of ballots.
6244. Voter unable to read English.
6245. Distinguishing marks—Penalty.
6246. Removing ballot from election room—Penalty.
6247. Counting and destroying ballots.
6248. Canvassing votes—Destroying ballots.

SEC.	SEC.
6249. Felonies—Penalty.	6264. Duty of board.
6250. Felony by clerk, inspector or messenger.	6265. Adjournments forbidden.
6251. Attempting to enter election room—Remaining too close to polls—Penalty.	6266. Meals for election officers.
6252. Inducing elector to place distinguishing mark on ballot—Penalty.	6267. Certificate of judges.
6253. Revealing how elector voted—Penalty.	6268. Care of ballots and papers.
6254. Inducing members to violate act—Penalty.	6269. Clerk's and trustee's duties.
6255. Removing or destroying election conveniences—Penalty.	6270. Board of canvassers.
6256. Electioneering—Disclosing vote—Penalty.	6271. Officers of board.
6257. Violation of duty by officer—Penalty.	6272. Duties of board.
6258. Constitutional amendment—How voted on.	6273. Certificate.
6259. Preserving affidavits.	6274. Tie vote.
6260. Township and county elections.	6275. Defective papers—Duty of board.
6261. Town and city elections.	6276. Certificate of election.
6262. Legal holiday.	6277. Defective returns—Commissions.
6263. Laws repealed.	6278. Certificates of votes for legislators.
	6279. Certificate of election of legislators.
	6280. Tie vote for legislators.
	6281. Certificate to secretary of state.
	6282. Duty of secretary of state.
	6283. Secretary of state and governor, as to congressmen.
	6284. Clerk's duty as to election of governor.
	6285. Pay of officers.

[1881 S., p. 482. In force September 19, 1881.]

6190. (4678.) When held—What offices filled.—1. A general election shall be held on the first Tuesday after the first Monday in November in the year one thousand eight hundred and eighty-two, and biennially thereafter on the same day, at which election all existing vacancies in office, and all offices, the terms of which will expire before the next general election thereafter, shall be filled, unless otherwise provided by law.

The supreme court takes judicial notice of the number of votes cast at a general state election upon all questions of public affairs affecting the state. *State v. Swift*, 69 Ind. 505.

If an office becomes vacant by resignation of the incumbent at a period before a general election less than the time required by law for giving notice of such election, such vacancy can not be filled at such election. *Beal v. Ray*, 17 Ind. 554; *Beal v. Morton*, 18 Ind. 346.

If an officer files his resignation of an office before the time fixed by law for an election, but such resignation is not to take effect until after such election, a successor to such officer can not be elected at such election. *Biddle v. Willard*, 10 Ind. 62.

Courts take judicial notice when the terms of public officers commence. *Hizer v. State*, 12 Ind. 330.

6191. (4679.) Certificate of clerk—Notice of sheriff.—2. The clerk of the circuit court shall, at least twenty days before such election, certify to the sheriff of his county what officers are to be elected; and such sheriff shall give fifteen days' notice thereof, by posting up, at all usual places of holding such elections, a copy of such certificate, and

by one publication thereof in some newspaper of his county, if any there be, and by delivering a copy thereof to the township trustee of each township within the county. But no election shall be invalidated by the failure of such clerk or sheriff in the performance of any of the duties enjoined by this section.

Voters are required to take notice of the time for general elections and the officers to be elected, and a failure to give notice of an election does not render the same invalid. *Carson v. McPhetridge*, 15 Ind. 327; *State, ex rel., v. Jones*, 19 Ind. 356; *Lafayette v. State, ex rel.*, 69 Ind. 218; *Parmater v. State, ex rel.*, 102 Ind. 90.

Generally any immaterial departure from the requirement of statutes relative to the holding of elections will not affect the validity thereof. *Gass v. State, ex rel.*, 34 Ind. 425; *Railroad Co. v. Geiger*, 34 Ind. 185; *Dobyns v. Weadon*, 50 Ind. 298; *Mustard v. Hoppes*, 69 Ind. 324; *Parvin v. Wimberg*, 130 Ind. 561.

6192. (4680.) Qualifications of electors.—3. All elections shall be free and equal; and in all elections every male citizen of the United States, of the age of twenty-one years and upwards, who shall have resided in this state during the six months, in the township sixty days, and in the ward or precinct thirty days, immediately preceding such election; and every male of foreign birth, of the age of twenty-one years and upwards, who shall have resided in the United States one year, and shall have resided in this state during the six months, in the township sixty days and in the ward or precinct thirty days immediately preceding such election, and shall have declared his intention to become a citizen of the United States, conformably to the laws of the United States on the subject of naturalization—shall be entitled to vote in the township or precinct where he may reside.

See section 84 for constitutional provision.

Residence is the being in a given place with the intention of making it one's home. *McCollem v. White*, 23 Ind. 43.

It requires an intention to change the domicile, and absence temporarily, with an intention to return, will not change the domicile no matter how long the absence may be. *Yonkey v. State, ex rel.*, 27 Ind. 236; *Maddox v. State*, 32 Ind. 111; *Cullbertson v. Board*, 52 Ind. 361; *Astley v. Capron*, 89 Ind. 167.

6193. (4681.) Who disfranchised.—4. Every person undergoing a sentence of imprisonment on conviction for any felony or misdemeanor shall be disfranchised during the period of such imprisonment.

6194. (4682.) Soldiers, seamen, and marines.—5. No soldier, seaman, or marine, in the army or navy of the United States or of their allies, shall be deemed to have acquired a residence in the state in consequence of having been stationed within the same; nor shall any such soldier, seaman, or marine have the right to vote.

6195. (4683.) Residence.—6. No person shall be deemed to have lost his residence in the state by reason of his absence either on business of this state or of the United States.

6196. (4684.) Elector's freedom from arrest.—7. In all cases, except treason, felony, and breach of the peace, electors shall be free from arrest in going to elections, during their attendance there, and in returning from the same.

[1857, p. 35. In force August 24, 1857.]

6197. (4685.) Betting on elections.—1. Any person who shall bet or wager any money or other valuable property on the result of any election in this or any other state shall, upon conviction thereof, forfeit and pay to the state of Indiana, for the benefit of the common school fund, any sum not less than the amount so bet or wagered nor more than twice said amount.

See section 2177, volume 1.

If property is sold to be paid for or not according to the result of an election, the parties are subject to a criminal prosecution. *Parsons v. State*, 2 Ind. 499; *Hizer v. State*, 12 Ind. 330; *Davis v. Leonard*, 69 Ind. 213.

A wager on the result of an election is determined as soon as the ballots are cast although it may then be impossible to ascertain the result. *Hizer v. State*, 12 Ind. 330.

Courts will take judicial notice as to who was elected to an office at a general election. *Hizer v. State*, 12 Ind. 330.

Betting upon the result of an election is gaming. *Frazer v. State*, 58 Ind. 8.

The offense under this section consists in betting or wagering money or property on the result of an election without regard to losing or winning such money or property. *Frazer v. State*, 58 Ind. 8.

The parties may be compelled to testify, but they can not afterwards be prosecuted for the offense. *Frazer v. State*, 58 Ind. 8.

An indictment alleging the winning or losing of an article on the result of an election alleged to have taken place after a return of the indictment, is bad. *State v. Windell*, 60 Ind. 300.

If property is to be paid for or not, as an election may result, the purchaser can not be charged with losing money on the result of the election. *Wagner v. State*, 63 Ind. 250.

Sections 4686 to 4706 inclusive, and sections 4710 and 4711, R. S. 1881, are omitted as being superseded by the election law of 1889, Acts 1889, p. 157. Ell. Supp., section 1323 *et seq.*, and the amendments made thereto, which follow hereafter.

[Acts 1889, p. 157. In force May 10, 1889.]

6198. (E.S.1323.) Precincts—Number of voters.—1. That the county commissioners of each county in this state shall, at their first session after the taking effect of this act, divide the townships of their respective counties into election precincts, and establish the boundaries of the same. Such board of commissioners shall designate at least one place of holding elections in each township, and every township in which only one place of holding elections is designated shall constitute a precinct. There shall be but one voting place in a precinct. Each precinct shall contain, as nearly as practicable, two hundred electors, based on the number of votes cast at the last election for presidential electors; but no precinct shall contain more than two hundred and fifty electors. If at any election hereafter two hundred and fifty or more votes shall be cast at any voting place, it shall be the duty of the inspector in such precinct to report the same to the board of county commissioners, who shall, at their next regular meeting, divide such precinct as equally as possible so that the new precincts formed thereof shall each contain two hundred electors, as nearly as practicable; but no precinct shall contain more than two hundred and fifty electors,

and shall report such division to the clerk of the circuit court of such county, and to the governor of the state, together with the estimated number of votes in each of the new precincts. If such board shall fail to act as herein directed, any qualified voter of the county may apply for a writ of mandamus to compel a performance of this duty.

6199. (E. S. 1324.) Boundaries of precinct—Change.—2. The board of commissioners of any county may change the boundaries of any precinct within such county, or divide any precinct into two or more precincts, or consolidate two or more precincts into one, or change any place of holding elections whenever public convenience or the public good may require it: *Provided*, That no such change, division or consolidation shall be made after the June term of such commissioner's court next preceding an election: *And, provided further*, That no such change, division or consolidation shall be valid without giving due notice, at least one month before any election, by one publication in two newspapers published in said county, representing the two political parties which cast the highest number of votes in the state at the last general election, and by posters put up in four of the most public places in each precinct: *And, provided, further*, That no precinct shall be enlarged so as to contain more than two hundred and fifty electors.

(As amended, Acts 1891, p. 124. In force June 3, 1891.)

If a change of boundaries of a township after the June term requires a change of precincts to be made, the commissioners may make the same. *Duncan v. Shenk*, 109 Ind. 26.

6200. (E. S. 1325.) Officers of election.—3. Township trustees shall, by virtue of their office, be inspectors of elections in the precincts in which they respectively reside, and shall, prior to the opening of the polls in such precinct, appoint as judges of election two qualified electors of such precinct, who shall have been freeholders and resident householders therein for at least one year, or householders for at least two years next preceding such election, and who are members of different political parties and of the parties which cast the highest number of votes in the state at the preceding general election: *Provided*, That if at least one week or more prior to such election the chairman of the county central committee of either of the two parties that cast the largest number of votes in the state at the last general election shall designate a member of such party as judge, having the same qualifications as above prescribed, he shall be appointed, and such judges, together with the inspector, shall constitute a board of election. No person shall be eligible as a member of the board of election who has anything of value bet or wagered on the result of such election, or who is a candidate to be voted for at such election, or who is father, father-in-law, son, son-in-law, grandfather, grandson, brother, brother-in-law, uncle, nephew, first or second cousin of any candidate at such election. If at any time before, or during an election, it shall be made to appear to any inspector by the affidavit of two or more qualified electors of the precinct, that either of the judges is disqualified

under the provisions of this act, he shall at once remove such judge and fill the place with a qualified person of the same political party as the judge removed; and in case such disqualified judge shall have taken the oath of office hereinafter prescribed, the inspector shall place such oath and affidavit before the next grand jury of the county.

6201. (E. S. 1326.) Inspectors—Election board.—4. Whenever any board of county commissioners shall designate more than one precinct in any township, it shall, at the June term of said board next preceding any election, appoint in each precinct in which no township trustee resides, as inspector of such election, some qualified voter of such precinct who shall have been a freeholder and resident householder in such precinct for at least one year, or a resident householder for at least two years next preceding such election. Such board of county commissioners shall hold a special session one week before each election, and shall fill all vacancies that may have occurred in the office of inspector, and shall fill any vacancy occurring thereafter at any regular or called session of the board previous to the election. Such appointed inspector shall, before the time of opening the election in his precinct, appoint two election judges, if the same have not already been appointed, as hereinbefore provided, in the same manner and under the same requirements as provided for township trustees acting as inspectors, and such judges and inspectors shall constitute the board of election for such precinct. If any member of an election board shall fail to appear at the hour appointed for the opening of the polls, the remainder of the board shall select a member of his political party to serve in his stead: *Provided*, That, if the qualified electors of his party present at the polls shall nominate a qualified person for such vacancy, such nominee shall be appointed. If none of the members of an election board shall appear at the hour appointed for opening the polls, the qualified electors present shall elect a board *viva voce*, as nearly as possible in conformity with the provisions hereof.

6202. (E. S. 1327.) Poll-clerks.—5. Such board of election shall appoint as poll-clerks two qualified electors of such precinct, one from each of the two parties that cast the largest vote in the state at the last general election: *Provided*, That if, four days or more prior to such election, the chairman of the county central committee of either of the two parties that cast the largest number of votes in the state at the last general election shall designate a member of such party as poll-clerk, such nominee shall be appointed.

6203. (E. S. 1328.) Forms.—6. The auditor of each county in the state shall make out and cause to be delivered to the inspectors of the several precincts in their respective counties, at least ten days previous to any election, a suitable number of blank forms of poll-books, containing one column headed "Names of voters," and an additional column headed "Number of voters [votes];" and also forms of election returns, with the proper captions, forms of oaths, and forms of certificates and tally papers necessary to be used in all elections hereafter held in this state.

6204. (E. S. 1329.) Oath of officers.—7. Before any election shall be opened, the inspector and judges shall each make oath to support the constitution of the United States and of this state; to faithfully and impartially discharge the duties assigned by law; that they will not knowingly permit any person to vote who is not qualified, and not knowingly refuse the qualified vote of any elector, or cause any delay to persons offering to vote, further than is necessary to procure satisfactory information of the qualification of such person as an elector; that they will not disclose or communicate to any person how any elector voted or how any ballot was folded, marked or stamped; and that they are now and for one year next preceding have continued to be *bona fide* residents and freeholders, or *bona fide* householders, for at least two years, of the township in which such precinct is situated; and that they have nothing of value bet or wagered upon the result of said election, and are not candidates at said election, and that they are not related to any person to be voted for at said election within the degrees named in section 3 of this act; which oath shall be in writing or printed, and shall be subscribed and executed before some person authorized by law to administer oaths, which officer shall attach thereto his jurat; and such oath shall then be attached to the poll-book, and with it return [returned] to the clerk's office of his county, as hereinafter provided. Which oath shall be in the following form:

State of Indiana, }
 — County, } ss:

I do solemnly swear (or affirm as the case may be) that I will support the constitution of the United States and of this state; that I will faithfully and impartially discharge the duties as inspector or judge of election assigned by law; that I will not knowingly permit any person to vote who is not qualified, and will not knowingly refuse the vote of any qualified elector, or cause any delay to persons offering to vote further than is necessary to procure satisfactory information of the qualification of such person as an elector; that I am now and have been continuously for one year next preceding this date a *bona fide* resident freeholder (or a *bona fide* resident householder for at least two years next preceding this date) of the township in which the precinct in which I am to act as a member of the election board is situated; and that I will not disclose or communicate to any person how any elector has voted at such election, or how any ballot has been folded, marked or stamped; that I have nothing of value bet or wagered upon the result of said election, and am not a candidate at this election, and am not related to any person to be voted for at this election within the degrees named in section 3 of the election law.

Subscribed and sworn to before me this — of —. —

6205. (E. S. 1330.) Who shall administer oath.—8. If no person present be authorized by law to administer the oath of office, the inspector shall administer the same to the judges, and one of such judges shall then administer said oath to the inspector.

6206. (E. S. 1331.) Inspector's duties.—9. The inspector shall be chairman of such board, and before the reception of any votes, shall administer an oath to the clerks of the election that they will faithfully discharge their duties as such. After the organization of the board of elections the inspector may administer all necessary oaths which may be required in the discharge of his duties, and all oaths shall be writ-

ten or printed, and shall be signed by the persons making such oaths in the presence of such board of elections, and the person administering such oaths shall affix his jurat thereto, and said affidavit shall be attached to and returned with the poll lists to the office of the county clerk. The oaths herein prescribed for the clerk of elections shall be in the following form, namely:

State of Indiana, }
 ——— County. } ss:

I do solemnly swear (or affirm as the case may be) that I will faithfully and honestly discharge my duties as clerk of the election in ——— precinct and ——— ward (——— or ——— township) in ——— county, Indiana, and that I will not disclose or communicate to any person how any elector voted or how any ballot was folded, marked or stamped.

Subscribed and sworn to before me this ——— day ———.

6207. (E. S. 1332.) Ballot boxes.—10. The board of county commissioners of each county shall provide, at the expense of the county, two ballot boxes, one painted red, for the reception of the ballots prepared by the state board of election commissioners, and one painted white, for the reception of the ballots prepared by the county board of election commissioners for each precinct; each ballot box shall have at least two locks of different kinds and combinations, so that the key of one will not unlock the other, and be otherwise so constructed as to contribute toward the prevention of fraud.

6208. (E. S. 1333.) Inspection of ballot boxes—Keys.—11. An opening shall be made in the lid of each box sufficient only for a single ballot; and, at the time the election is opened, the inspector and judges shall see that there are no ballots in the box before the voting begins, and shall thereupon securely lock the box, and give one key to one of the judges who is in politics opposite to the inspector, the inspector retaining the other key; and the same shall not be again opened until the polls are closed, and the board is ready to immediately proceed with the counting.

6209. (E. S. 1334.) Opening and closing election.—12. The election shall be opened in the forenoon at the hour of 8 o'clock and continue open until 4 o'clock of the afternoon, after which the board may close the election at any time, when all the electors have voted, or when fifteen minutes have passed without a vote having been tendered; but the polls shall, in no case, be kept open after 6 o'clock of the afternoon; and the polls shall not be closed after 4 o'clock and before 6 o'clock except by the unanimous consent of all the members of the election board; but whenever the polls are closed, proclamation must be made of the fact of such closing by the inspector, to the people outside, in a loud and audible tone of voice, and a minute of such proclamation, and of the time when the same was made, must be entered on the tally papers by the clerks, and after such minute has been made, no more votes shall be received: *Provided*, That upon the petition of twenty legal voters and householders of any precinct in the state, presented to the board of county commissioners at their June

session next preceding any election in the county in which such precinct or precincts are situate, petitioning said board for the opening of the election at the hour of 6 o'clock in the forenoon, it is made the duty of the board of commissioners to grant and enter of record the prayer of such precinct petitioners; and it is made the further duty of the board to direct the auditor of the county to publish in two newspapers of general circulation published in said county, representing the leading national political parties opposed to each other, for three successive weeks, a notice setting out fully the name of the precinct or precincts, and the township, town or city in which such precinct or precincts are situated, so petitioning for the opening of the polls at 6 o'clock in the forenoon, and the board shall enter of record an order requiring the polls of every such precinct to be opened accordingly: *Provided, further*, That in all cities and incorporated towns having a population of one thousand or more as shown by the last United States census, the polls shall be opened at 6 o'clock in the forenoon on the day of such election and closed at 6 o'clock in the afternoon of said day.

6210. (E. S. 1335.) **Where to vote.**—13. Each elector shall vote by ballot in the precinct wherein he resides.

Such portion of this section as required a registration by voters in certain cases, is omitted, as being unconstitutional. *Morris v. Powell*, 125 Ind. 281.

The act of March 9, 1891 (Acts 1891, p. 350), requiring voters in certain cases to register, is unconstitutional. *Brewer v. McClelland*, 32 N. E. Rep. 299.

6211. (E. S. 1336.) **Proclamation of opening.**—14. Before receiving the ballot of any elector, the board of election shall cause to be proclaimed that such election is opened.

6212. (E. S. 1337.) **Election sheriffs.**—15. It shall be the duty of the sheriff of each county to appoint, five days prior to each election, two special deputies for each precinct in the county, to be known as election sheriffs, who shall attend the polling places in their respective precincts, from the opening of the polls to the conclusion of the count. It shall be their duty to preserve order at the polls and enforce the provisions of the election law under the direction of the election board, and make arrests on the demand of a member of the board, or on affidavit, as hereinafter provided. One of such election sheriffs shall be chosen from each of the two parties that cast the largest number of votes in the state at the last general election; and if at least five days prior to such election, the chairman of the county central committee of either of such parties, shall nominate a member of his party for election sheriff in any precinct, such nominee shall be appointed. If any election sheriff shall fail to appear at the opening of the polls, the member or members of the election board of his political party shall appoint a person to act in his place. Compensation of one dollar and fifty cents per day shall be allowed to each election sheriff by the board of county commissioners, but no such election sheriff shall be allowed for more days' service than members of the election board in the same precinct are allowed. No other peace officers of the state, or any divis-

ion thereof, shall be allowed within fifty feet of the polls, except to serve process of courts or to vote, unless summoned by the election sheriffs. No person other than the election officers shall remain within fifty feet of the polls, except when voting: *Provided*, That each political party may appoint one challenger and one poll-book holder for each precinct, who shall be entitled to stand at the sides of the chute next to the challenge window. Such challenger and poll-book holder shall be appointed in writing by the chairman of the county or other local committee of their political party, and shall produce written appointments on demand of a member of the election board. It shall be lawful for a political party to pay such challenger and poll-book holder not more than three dollars for services at any election, but not more than one person of any one party shall be paid for services in either such capacity in any precinct, and no challenger or poll-book holder shall receive any compensation for such services, except from the political party he represents.

(As amended, Acts 1891, p. 124. In force June 3, 1891.)

6213. (E. S. 1338.) State board of election commissioners.—16. The governor of the state, and two qualified electors by him appointed, one from each of the two political parties that cast the largest number of votes in the state at the last preceding general election, shall constitute a state board of election commissioners. Such appointments shall be made at least thirty days prior to each general election, and if, prior to that time, the chairman of the state central committee of either of such parties shall nominate in writing, a member of his own party for such appointment, the governor of the state shall appoint such nominee. In case of death or disability of either appointee, the governor of the state shall notify the chairman of the said central committee of such appointee's political party, and such chairman may, within three days thereafter, recommend a successor, who shall thereupon be appointed: *Provided*, That if such chairman shall fail to make recommendations of appointment within the time specified, the governor of the state shall make such appointment of his own selection from such political party. It shall be the duty of said board to prepare and distribute ballots and stamps for election of all officers for whom all the electors of the state are entitled to vote. In compliance with the provisions of the election law. The members of such board shall serve without compensation.

6214. (E. S. 1339.) County board of election commissioners.—17. In each county in the state, the clerk of the circuit court and two persons by him appointed, one from each of the two political parties that cast the largest number of votes in the state at the last general election, shall constitute a county board of election commissioners. Said appointments shall be made in all respects as appointments to the state board of election commissioners are required to be made by the governor of the state, except that the privilege of nomination shall belong to the chairmen of the county central committees of the two parties aforesaid. It shall be the duty of such board to prepare and distribute

ballots for election of all officers to be voted for in such county other than those who are to be voted for by all of the electors of the state, in compliance with the provisions of this act. The members of such board shall serve without compensation.

6215. (E. S. 1340.) **Duties of board.**—18. The said boards of election commissioners shall cause to be printed on the respective ballots the names of the candidates nominated by the conventions of any party that cast one per cent. of the total vote of the state at the last preceding general election, as certified to said boards by the presiding officer and secretary of such convention, or in case of primary election, by the chairman and secretary of any county or township committee; and also the names of any candidates for any office when petitioned so to do by electors qualified to vote for such candidates, as follows: For a state officer, or any officer for whom all the electors of the state are entitled to vote, five hundred petitioners; for a representative in congress from any congressional district, two hundred petitioners; for a county officer, member of the general assembly, circuit judge or prosecuting attorney, twenty-five petitioners; for an officer of a township, ward or other division less than a county, twenty petitioners. The signatures to such petition need not be appended to one paper, but no petitioner shall be counted, except his residence and post-office address be designated. Such petition shall state the name and residence of each of such candidates; that he is legally qualified to hold such office; that the subscribers desire and are legally qualified to vote for such candidates; and may designate a brief name or title of the party or principle which said candidates represent, together with any simple figure or device by which they shall be designated on the ballots. The certificate of nomination by a convention or primary election shall be in writing, and shall contain the name of each person nominated, his residence and the office for which he is nominated, and shall designate a title for the party or principle which such convention or primary election represents, together with any simple figure or device by which its list of candidates may be designated on the ballots; said certificate shall be signed by the presiding officer and secretary of such convention, or by the chairman and secretary of the county, city or township committee, who shall add to their signatures their respective places of residence, and acknowledge the same before an officer duly authorized to take acknowledgments of deeds. If the certificate of nomination of any state convention shall request that the figure or device selected by such convention be used to designate the candidates of such party on the ballots for all elections throughout the state, such figure or device shall be so used until changed by request of a subsequent state convention of the same party. Such device may be the figure of a star, an eagle, a plow, or some such appropriate symbol, but the coat of arms or seal of the state or of the United States, the national flag, or any other emblem common to the people at large shall not be used as such device. A certificate of such acknowledgment shall be appended to such instrument. In case of

death, resignation or removal of any candidate subsequent to nomination, unless a supplemental certificate or petition of nomination be filed, the chairman of the state, county, city or township committee shall fill such vacancy. In case of a division in any party, and claim by two or more factions to the same party name, or title, or figure, or device, the board of election commissioners shall give the preference of name to the convention held at the time and place designated in the call of the regularly constituted party authorities, and if the other faction shall present no other party name, title or device the board of election commissioners shall select a name or title, and place the same before the list of candidates of said faction on the ballot, and select some suitable device to designate its candidates. If two or more conventions be called by authorities claimed to be the rightful authorities of any party, the proper board of election commissioners shall select some suitable devices to distinguish one faction from the other, and print the ballots accordingly: *Provided, however,* That if any political party entitled to nominate by convention shall in any case fail to do so, the names of all nominees by petition for any office who shall be designated in their petitions as members of and candidates of such party shall be printed under the device and title of such party on the ballots, as if nominated by convention. Certificates and petitions of nomination of candidates for offices to be voted [for] by the electors of the entire state shall be filed with the governor of state. Certificates and petitions of nomination of candidates for offices to be voted for by electors of any district or division of the state exclusively shall be filed with the clerks of the circuit courts of the counties or county included in or including such district or division.

6216. (E. S. 1341.) **Petitions of nomination.**—19. If any certificate or petition of nomination shall contain the name of more than one candidate for any office to be filled, neither name shall be printed as a candidate for such office. If any person shall join in nominating by petition more than one nominee for any office to be filled, such person shall not be counted as a petitioner for either nomination. If any person has been nominated as a candidate for any office by convention, and also as a candidate for the same office by petition, his name shall be placed on the ballot but once, to wit: In the list of candidates nominated by such convention; and the place occupied by his name in such petition shall be left blank: *Provided,* That if such candidate shall, in writing, prior to the last day for filing nominations, request that his name be printed as nominated by petition, it shall be so printed, and shall be omitted from the list nominated by convention.

(As amended, Acts 1891, p. 125. In force June 3, 1891:)

6217. (E. S. 1342.) **Petitions and certificates to be preserved.**—20. The governor of the state and county clerks shall cause to be preserved in their respective offices all certificates and petitions of nomination filed therein under the provisions of this act for six months after the election for which such nominations were made.

6218. (E. S. 1343.) **When to be filed.**—21. Certificates and petitions

of nominations filed with the governor of the state, shall be filed not more than sixty days, and not less than twenty days, before the day fixed by the law for the election of the persons in nomination. Certificates and petitions of nomination herein directed to be filed with the clerk of a county, shall be filed not more than sixty and not less than fifteen days before election.

6219. (E. S. 1344.) **Certificate of governor.**—22. Not less than eighteen days before an election of the state to fill any public office for which all the electors are entitled to vote, the governor of the state shall certify to the county clerk of each county the name and the place of residence of each person nominated for such office, as specified in the certificates and petitions of nominations filed with the governor of the state, and shall designate therein the device under which the group or list of candidates of each party will be printed, and the order in which they will be arranged.

Section 1345, Ell. Supp., being section 23 of the act of 1889, providing for publication of nominations, was amended by act of 1891, Acts 1891, p. 126, and this amendment was repealed by act of 1893, Acts 1893, p. 154, and such repealing act provides that the original section shall not be revived, but is also repealed.

6220. (E. S. 1346.) **Declination of nominees.**—24. The governor of the state shall not certify the name of a candidate whose certificate of nomination shall have been filed in his office who shall have notified him in a writing signed and executed with the formalities prescribed for the execution of an instrument to entitle it to record that he will not accept the nomination contained in the certificate or petition of nomination. The county clerk shall not include in the publication to be made according to section 23 hereof, the name of any candidate whose certificate, or petition, of nomination shall have been filed in his office who shall have notified him in like manner that he will not accept the nomination. The names of such candidates shall not be included in the names of the candidates to be printed in the ballots as hereinafter provided.

6221. (E. S. 1347.) **Proposed constitutional amendment.**—25. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote, the secretary of state shall duly, and not less than thirty days before election, certify the same to the clerk of each county in the state, and the clerk of each county shall include the same in the publication provided for in section 23 in this act.

6222. (E. S. 1348.) **Form of ballot.**—26. The board of election commissioners shall cause the names of all candidates of their respective jurisdictions to be printed on one ballot, all nominations of any party or group of petitioners being placed under the title and device of such party or petitioners as designated by them in their certificate or petition, or if none be designated under some suitable title and device. The ballots shall be of uniform size and of the same quality and color of paper, and sufficiently thick that the printing can not be distinguished from the back. All ballots prepared by the state board of

election commissioners shall be printed on red tinted paper and put up in blocks of one hundred each. All ballots prepared by the county boards of election commissioners shall be printed on white paper. If the same device for designating candidates be selected by two parties or groups of petitioners, it shall be given to the one which first selected it, and a suitable device shall be selected for the other. The device named and list of candidates of the democratic party shall be placed in the first column on the left hand side of said ballot; of the republican party in the second column; of the prohibition party in the third column, and of any other party in such order as the board of election commissioners shall decide. The device of each party shall be enclosed in a square of not less than one and one-half inches on each side, and shall be placed at the head of the list of candidates of the party. Immediately under it shall be placed the name or title of the party ticket, and immediately under the name or title the list of candidates of the party, such names being placed three-fourths of one inch apart from center to center of the name, the name of each candidate having immediately on its left a square three-eighths of an inch on each side, and the general arrangement of the ballot shall conform as nearly as possible to the following:

Device.	Device.	Device.
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Democratic Ticket.

Republican Ticket.

Prohibition Ticket.

For Governor.

For Governor.

For Governor.

Dem.	Courtland C. Matson.
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Rep.	Alvin P. Hovey.
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Pro.	Joseph D. Hughes.
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For Lieut.-Governor,

For Lieut. Governor,

For Lieut.-Governor,

Dem.	William R. Myers.
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Rep.	Ira J. Chase.
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Pro.	Robert Gale
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(As amended, Acts 1891, p. 126. In force June 3, 1891.)

6223. (E. S. 1349.) **Nomination to fill vacancy.**—27. In case of the death, removal or resignation of any candidate after the printing of such ballots and before such election, it shall be lawful for the chairman of the state, district or county political organization of which such candidate was a member to make a nomination to fill such vacancy, and to provide the election board of each precinct in which such candidate is to be voted for with a number of pasters containing only the name of such candidate at least equal to the number of ballots provided each precinct, but no pasters shall be given to or received by any one except such election board and such chairman, and it shall be the duty of the polling clerks to put one of such pasters, in a careful and proper manner and in the proper place, on each ticket before they shall sign their initials thereon.

6224. (E. S. 1350.) **Printer—Felony.**—28. If the printer of such ballots, or any person employed in printing the same, shall give or deliver, or knowingly permit to be taken, any of said ballots by any person other than a member of the board of election commissioners;

for which such ballots are being printed, or shall print or cause or permit to be printed any ballot in any other form than the one prescribed by this act, or with any other names thereon, or with the names spelled or the names or devices thereon arranged in any other way than that authorized and directed by the said board of election commissioners, he shall be guilty of felony, and on conviction thereof shall be imprisoned in the state penitentiary not less than three nor more than ten years, and be disfranchised for any determinate period not less than ten years.

6225. (E. S. 1351.) Distributing ballots.—29. It shall be the duty of each county clerk to appear in person, or by specially authorized deputy, bearing credentials given under the seal of the circuit court, at the office of the governor of the state not more than sixteen, nor less than ten days prior to each general election, and the state board of election commissioners shall thereupon deliver to the said clerk ten ballots for every five voters and fraction thereof in each precinct of his county at the last presidential election, or if a new precinct has been established in such county, ten ballots for every five voters of the estimated vote as reported by the board of county commissioners: *Provided, however,* That if it shall be made to appear by the affidavit of such clerk that any precinct has so increased in population as to have fifty per cent. more voters than at last presidential election, or at the time of estimate by the board of county commissioners, the state board of election commissioners shall deliver to him two ballots for every voter so declared by him under oath to be resident in said precinct. The ballots shall, in the presence of the clerk, be wrapped and tied in packages, plainly marked, one for each precinct, and securely sealed with wax, and the clerk shall give his receipt for the same. And for the safe sealing of such ballots, such board shall provide itself with a seal of such design as it may deem proper, but the same design shall not be used for any two consecutive elections. The state board of election commissioners shall also provide and inclose in each of said sealed packages three stamps bearing a cross (X), or such other device as they may select, together with the ink-pads or other necessary apparatus ready for use. In addition to the precinct packages, the state board of election commissioners shall deliver to each clerk a package, wrapped and sealed in his presence, containing two thousand state ballots, and twelve stamps with their necessary ink-pads, which package shall remain in the custody of the county board of election commissioners and shall not be opened by them except for the purpose of supplying a precinct whose ballots or stamps have been lost or destroyed, on due showing of such fact as hereinafter provided. The state board of election commissioners shall, from time to time, certify to the auditor of state the necessary expenses of the preparation and distribution of the state ballots and stamps, and the auditor shall audit and issue his warrants for the same, which shall be paid out of any funds in the state treasury not otherwise appropriated.

(As amended, Acts 1891, p. 127. In force June 3, 1891.)

6226. (E. S. 1352.) Allowance to clerk—Special messenger.—30. An allowance shall be made to the clerk by the board of county commissioners of five cents per mile for the distance necessarily traveled in going to and returning from the office of governor of the state; but in case said clerk of any county shall fail to appear at the office of the governor of the state by the close of the tenth day prior to election, the state board of election commissioners shall forthwith dispatch a special messenger to such county with the ballots for the county; which messenger, before receiving such ballots, shall take and subscribe to an oath, to be administered to him by the secretary of state, which oath shall be filed with said board of election commissioners, and shall be in the words following:

State of Indiana, }
County of Marion, } ss:

I, ———, swear (or affirm, as the case may [be],) that I will take charge of the election ballots delivered to me by the state board of election commissioners for the county of ———, and will safely deliver said ballots in the sealed packages, and in the same condition as received by me, to the clerk of said county at the earliest time that I can reach the county seat of said county. So help me God. ———.

Subscribed and sworn to before me this — day of ———, 18— . ———.

And in such case said messenger shall be allowed three dollars per day for the time necessarily employed, and three cents per mile for the distance necessarily traveled by him, which allowance shall be certified to the treasurer of such county, and deducted from the first moneys thereafter accruing to such clerk payable by the treasurer. The amount so deducted shall be remitted by the county treasurer to the treasurer of state.

6227. (E. S. 1353.) Permitting ballots to be taken—Felony.—31. If any member of the board of election commissioners shall give or deliver to any other person any of said ballots, or shall permit any of them to be taken away except as herein provided, he or they shall be guilty of a felony, and on conviction shall be punished by imprisonment in the state penitentiary for not less than three nor more than ten years, and be disfranchised for any determinate period not less than ten years.

6228. (E. S. 1354.) Removing ballots—Felony.—32. If any person shall take or remove in any manner, feloniously or with the consent or permission of the custodian for the time, from any place where they may lawfully be under this act, any of such ballots or stamps, or be found in custody or possession of such ballots or stamps (except as an official or custodian under this act, or while within the polling place for the purpose of voting); or if any such custodian or official shall consent to, or permit, any of such ballots or stamps to be removed or carried away from the place where they may lawfully be by any person, except an official or custodian under this act whose duty it is to receive the same, such person, custodian or official shall be deemed guilty of a felony, and on conviction shall be punished by imprisonment in the penitentiary at hard labor for not less than three nor more

than ten years, and be disfranchised for any determinate period not less than ten years.

6229. (E. S. 1355.) Delivery of ballots.—33. It shall be the duty of each election inspector, or in case he can not attend, some other member of the election board authorized in writing by the inspector, to appear at the office of the clerk of circuit court of his county not more than three nor less than two days before election, and the county board of election commissioners shall deliver to him the sealed package of ballots and the stamps provided for his precinct by the state board of election commissioners, and also ten of the local ballots printed under the direction of the county board of election commissioners for each five or fraction thereof of the number of votes cast at such precinct at the last presidential election, or if a new precinct for each five or fraction of five voters, as estimated by the county commissioners: *Provided, however,* That in case it be made to appear by affidavit of such inspector that the number of voters in his precinct has increased more than 50 per cent. since the last presidential election or estimate by the board of county commissioners, there shall be delivered to him two ballots for each voter so declared under oath by him to reside in the precinct. The local ballots shall be wrapped and tied in packages and securely sealed with wax in the presence of said inspector or his representative, who shall receipt for the same; and for the safe sealing of such ballots the county board of election commissioners shall provide themselves with a seal of such design as they may deem proper, but the same design shall not be used at any two consecutive elections, and said packages shall not be opened until delivered to the election board of the respective voting precincts to which they are directed, and said boards shall be fully organized and ready for the reception of votes, as in this act provided.

6230. (E. S. 1356.) Opening sealed ballots—Poll clerks.—34. At the opening of the polls, after the organization of, and in the presence of, the election board, the inspector shall open the packages of ballots in such a manner as to preserve the seals intact. He shall then deliver to the poll clerk of the opposite political party from his own, twenty-five each of the state and local ballots, and to the other poll clerk the stamps for marking the ballots. The poll clerks shall at once proceed to write their initials in ink on the upper right hand corner of the back of each of said ballots, in their ordinary hand writing, and without any distinguishing mark of any kind. As each successive elector calls for a ballot the poll clerks shall deliver to him the first signed of the twenty-five ballots of each kind; and the inspector shall immediately deliver to the poll clerks another ballot of each kind, which the poll clerk shall at once countersign as before, and add to the ballots already countersigned, so that it shall be delivered for voting after all those theretofore countersigned.

(As amended, Acts 1891, p. 128. In force June 3, 1891.)

The provision that clerks of the election shall indorse the ballots is mandatory, but the provision as to the place of indorsement is only directory. *Parvin v. Wimberg*, 130 Ind. 561.

6231. (E. S. 1357.) Duties of county board—Instructions to voters.—35. The county board of election commissioners of each county shall cause to be printed in large type on cards, in English and such other language as they deem necessary, instructions for the guidance of electors in preparing their ballots. They shall furnish twelve of such cards in each of the languages determined upon by them to each of the election inspectors at the same time they deliver to him the ballots for his precinct. Each inspector shall cause to be posted one of each of said cards in each place or compartment provided for the preparation of ballots, and one of each kind of such cards at or near to the outer end of the chute leading to the polling place, and not nearer than fifty feet of the polling place, and not less than three of each of such cards, and three samples of each of the state and local ballots in and about the polling place at the opening of the polls on the day of election, which sample ballots shall be printed on different colored paper than the genuine ballots. Said cards shall contain full instructions to the voters as to what must be done: First, to obtain ballots for voting; second, to prepare the ballots for voting; third, to obtain a new ballot in place of one accidentally defaced, mutilated or spoiled; also, copies of sections 43, 50, 55, 56, 59 and 60 of this act.

6232. (E. S. 1358.) Special messenger.—36. In case any inspector or his representative shall fail to appear at the office of the county clerk by the close of the second day prior to any election, the county board of election commissioners shall forthwith dispatch a special messenger to his precinct with the ballots and stamps for such precinct. Such messenger shall be allowed two dollars for his time and five cents per mile for the distance necessarily traveled by him, and shall promptly report to such clerk and file with him the receipt of the person to whom he delivered such ballots and stamp, and his affidavit stating when and to whom he delivered such ballots and stamps, and such inspector shall receive no compensation for his services at such election.

6233. (E. S. 1359.) Inspector failing to appear.—37. Any inspector who shall willfully or negligently fail to appear at the clerk's office in person or by representative, as herein provided, shall be guilty of [a] misdemeanor, and on conviction shall be fined not less than ten dollars, nor more than one hundred dollars, and shall thereafter be incompetent to serve as inspector.

6234. (E. S. 1360.) Loss of ballots.—38. If by any accident or casualty the ballots delivered to any clerk, inspector or other messenger shall be lost or destroyed, it shall be the duty of such person in custody to report the loss at once to the board of election commissioners, from which the same were obtained, and make affidavit of the circumstances of the loss, whereupon such board shall at once resupply such person. In case such person in custody fails or refuses to report and make proof of the loss, any qualified elector may do so, and thereupon such board shall at once send a new supply by special messenger, as provided in other cases. In case, for any reason, there should be

found no ballots or other necessary means or contrivances for voting at the opening of the polls, it shall be the duty of the election board to secure the same as speedily as possible, and if necessary, such board may have ballots printed: *Provided, however,* That such ballots shall conform as nearly as possible to the genuine ballots, and the printing and the care of the same shall be under the same provisions and penalties as the printing and care of the other ballots prescribed in this act.

6235. (E. S. 1361.) Preserving and destroying ballots left over.—39. The various boards of election commissioners shall preserve the ballots that are left over in their hands after supplying the precincts as hereinbefore provided, until 6 o'clock P. M. of the day of election, and shall then count and destroy, by totally consuming by fire, all of such ballots but one, which shall be securely pasted in the election record immediately preceding the place where the vote is to be recorded. They shall also cause to be entered below such ballot the number of ballots printed by them, the number delivered to each messenger and the number destroyed by them.

6236. (E. S. 1362.) Room for holding election.—40. It shall be the duty of the county commissioners in each county, before each election, to provide for and secure in each precinct of the county a suitable room in which to hold the election, and to have placed therein a railing separating the part of the room to be occupied by the election board from the remainder of the room, and also three booths or compartments in which electors shall mark their ballots screened from observation, each containing a counter or shelf. Booths shall be so constructed and arranged that all the members of the election board can see whether more than one voter enters any one of such booths at one time. The portion of the room set apart for the election board shall include a window at which the voter shall appear for challenge, and such voter shall immediately announce his full and true name to the challengers. The board of county commissioners shall also provide for each precinct a chute or passage with a railing, rope or wire on each side, commencing fifty feet away from, and leading to such polling place passing such window for challenge, and thence to the entrance of the room in which the election is held. The expenses of such preparation shall be defrayed as other expenses of the county by the board of county commissioners. No election shall be held in a room in which spirituous, vinous or malt liquors are kept or sold.

6237. (E.S.1363.) Who may stand near polls—Challengers—Voting—Swearing in.—41. One challenger and one poll-book holder, appointed and designated by each party organization, shall be entitled to stand at the sides of the chute near the challenge window. No other person shall remain within fifty feet of the same, except for the purpose of offering his vote; and voters shall approach and enter the chute in the order in which they appear for the purpose of voting. If any person offering to vote shall be challenged by one of such challengers, or by any member of the election board, he shall stand aside and shall not be entitled to vote unless he makes affidavit in writing

that he is a qualified and legal voter of the precinct, and in such affidavit sets forth his name, residence, occupation, place or places of residence during the six months prior to the election, with the date of any removal within that time, and the names of two persons who have personal knowledge of his residence in the precinct thirty days and in the township sixty days, and shall, in case he be a person required by this act to be registered, also produce the necessary certificate of registration provided for in this act. He shall then be allowed to vote, unless the challenger, or some qualified voter of the precinct, make affidavit in writing that he knows or is informed and verily believes that the person offering to vote is not a legal voter in the precinct; and if the affidavit be on information and belief, he shall set forth the names of the person or persons from whom such information was obtained, and the person offering to vote shall not thereafter be allowed to vote, except one qualified voter of the precinct, who has been a freeholder and resident householder in the precinct for at least one year or a resident householder for two years next preceding such election shall make affidavit or affirmation in writing that of his personal knowledge such person offering to vote is a legal voter at the precinct: *Provided*, That if such person so offering to vote be challenged solely or for the additional reason that he is not a citizen of the United States, then such person so challenged for such reason shall take and subscribe the following oath:

I do solemnly swear (or affirm, as the case may be) that I have resided in the United States one year, and have declared my intention of becoming a citizen thereof in conformity with the laws thereof.

The other affidavits herein referred to shall be in the following form:

I do solemnly swear (or affirm, as the case may be) that I am a citizen of the United States; that I am now over the age of twenty-one years, to the best of my information and belief, and that I have been a *bona fide* resident of this state for six months immediately preceding this election; that I have resided in the township sixty days and in the precinct thirty days, and that I am now a *bona fide* resident of this precinct; that I am generally known by the name in which I now desire to vote, which is ———; that I have not voted and will not vote in any other precinct in this election; that my occupation is ———; that my present residence is ——— (if in the city or town give the street or number), and that during the last six months prior to this election I have resided at ———. I have removed from ——— to ——— on the following date ———, and that ——— and ——— have personal knowledge of my residence in the precinct thirty days and in the township sixty days,

I swear that I am informed and believe that ———, now offering to vote, is not a legal voter in this precinct, and that I obtained such information from ——— and ———.

I do solemnly swear (or affirm, as the case may be) that I am a qualified voter in this precinct; that I have been a freeholder and a resident householder in this precinct for one year, or a resident householder for two years next preceding this election; that ———, who now desires to vote has resided in this state for six months immediately preceding this election; that he has resided in this township sixty days and in this precinct thirty days, at ———; that he is now a *bona fide* resident of this precinct and a legal voter therein. These facts I know of my own personal knowledge.

When a voter complies with the law the judges of election can not refuse his vote. *State v. Robb*, 17 Ind. 536.

Judges of an election are only liable to a voter for refusing his vote when they act maliciously. *Carter v. Harrison*, 5 Blkf. 138.

6238. (E.S.1364.) Arrest of illegal voter.—42. If at any time during the election any qualified elector shall make affidavit before the inspector that any person who has voted is an illegal voter in such precinct, the person accused shall at once be arrested by the election sheriffs and by them delivered to the civil authorities. Immediately after the close of the election the inspector shall deliver such affidavit to some justice of the peace in the township, who shall proceed thereon as if the affidavit had been made before him.

6239. (E. S. 1365.) False affidavit—Perjury.—43. Whoever shall knowingly or willfully make a false affidavit, under any of the provisions of this act, shall be deemed guilty of perjury.

6240. (E. S. 1366.) Work limited and prohibited on election day.—44. No person entitled to vote at any general, national, state or county election, shall be employed upon the day on which such election shall be held in any manufacturing, mining, mechanical or mercantile establishment, or any railroad corporation in this state during the period of four hours after the opening of any election in the county in which such person is entitled to vote, except as to works of necessity, in which works of necessity, every employe shall be given some period of four hours between the opening and closing of the polls on said day; and any circuit court may enforce the provisions of this section in term time or in vacation by mandate, or otherwise, upon the application of any voter: *Provided, however*, That in any such establishment or corporation the employer or employes may agree on any four hours between the opening and closing of the polls, that will be most convenient. Every officer of any corporation, owner, superintendent, overseer or foreman, who employs or permits to be employed, any person in violation of this section, shall be guilty of a misdemeanor, and fined not less than fifty nor more than five hundred dollars.

(As amended, Acts 1891, p. 129. In force June 3, 1891.)

6241. (E. S. 1367.) Manner of voting.—45. When a voter shall have been passed by the challengers, or shall have sworn in, he shall be admitted to the election room: *Provided, however*, That not more than three voters shall be allowed in the room at one time. On entering the room the voter shall announce his name to the poll clerks, who shall register it. The clerk holding the ballots shall deliver to him one state and one local ballot, and the other clerk shall thereupon deliver to him a stamp, and both poll clerks, on request, shall give explanation of the manner of voting; if deemed necessary, by unanimous consent of the board, an interpreter may be called. The voter shall then, and without leaving the room, go alone into any of the booths which may be unoccupied and indicate the candidates for whom he desires to vote by stamping the square immediately preceding their names, and indicate his preference on any question of constitutional amendments or other special matter by stamping in front of the words

“Yes” or “No” under such questions: *Provided, however,* That if he shall desire to vote for all candidates of one party or group of petitioners, he may place the stamp on the large square enclosing the device and preceding the title under which the candidates of such party or group of petitioners are printed, and the vote shall then be counted for all the candidates under that title. If the voter stamps the large square enclosing the device, he shall not stamp elsewhere on the ballot, unless there be no candidate for some office in the list printed under such stamped device, in which case he may indicate his choice for such office by stamping the square to the left of the name of any candidate for such office on any other list; a stamp on a ballot in violation of this provision shall be treated as a distinguishing mark. If a stamp touches a square it shall be counted on the square, but a stamp that touches no square shall be treated as a distinguishing mark. Before leaving the booth or compartment, the voter shall fold his ballots separately, so that no part of the faces thereof shall be exposed, and so that the initials of the poll clerks shall be exposed, and on leaving the booth or compartment shall return the stamp to the poll clerk and deliver the ballots to the inspector, or to the judge who may temporarily be authorized to act for him, who shall forthwith, in the presence of the voters and of the election board, deposit the same in the respective ballot boxes, the state ballot in the red ballot box, and the local ballot in the white ballot box; and the ballot clerks shall write the word “voted” after the name of the voter on the poll lists: *Provided, however,* That if any elector shall show his ballot, or any part thereof, to any other person, after the same shall have been marked, so as to disclose any of the candidates voted for, such ballot shall not be deposited in the ballot box. A minute of such occurrence shall be made on the poll list, and such person will not be allowed to vote thereafter. If a voter shall offer to vote a ballot so folded as not to disclose the initials of the poll clerks and also not disclosing the face of the ballot, the election board shall direct him to return to the booth and fold his ballot properly. After voting, the voter shall leave the room, but no voter to whom a ballot and stamp, or either, have been delivered shall be permitted to leave the room without voting the ballots or returning them to the poll clerk, or without returning the stamp to the poll clerk from whom he received it. Any voter who shall attempt to leave the room with a ballot or stamp in his possession shall be at once arrested on demand of any member of the election board.

(As amended, Acts 1891, p. 129. In force June 3, 1891.)

If a voter indicates his choice by stamping the square opposite the name of a candidate, the stamp must touch the square. *Parvin v. Wimberg*, 130 Ind. 561.

If by mistake a ballot is put in the wrong ballot-box, such fact will not prevent the ballot from being counted. *Parvin v. Wimberg*, 130 Ind. 561.

6242. (E. S. 1368.) **Paster ballots.**—46. In addition to the state and local ballots which the clerk is to deliver to the voter in the election-room under the provisions of section 45 of the act of which this

act is an amendment, the voter may take with him into the booth a printed ballot or ballots of his own selection or preparation to be known as a paster ballot or ballots, and designed to be pasted upon either such state or local ballot, or upon each of them. If such paster ballot is designed to be pasted upon the state ballot, it shall be in the nature of a complete ticket and shall contain a complete list of all offices to be filled at the election where used by the vote of the electors of the whole state, and shall contain the name of one person for each and every one of such offices. If such paster ballot is designed to be pasted upon the local ballot it shall be in the nature of a complete ticket, and contain a complete list of all offices to be filled at such election for the filling of which the electors of the county where used are entitled to vote other than offices which are filled by the vote of the electors of the whole state, and it shall also contain the name of one person for each and every one of such offices in such list. The said paster ballots shall be in the form indicated as follows:

For Governor,
COURTLAND C. MATSON.
For Lieutenant-Governor,
WILLIAM R. MYERS.

They shall be printed in plain black ink upon white paper. The paper shall not be more than two inches in width, and of sufficient length to contain the complete list of offices and names as above specified. The names of the persons upon said list, as well as of the offices, shall be printed one below another in the manner above indicated. The distance from the center of the name of any person in such list to the center of the name of the person immediately below in such list, shall be three-fourths of an inch, in order that the names in such list when pasted upon the state or local ballot will conform to the squares thereon. Such pasters shall contain no heading, no printing save as above indicated, no writing, no blank nor any distinguishing marks of any kind whatever. Such paster ballot may be gummed upon the back and pasted upon the state or local ballot accordingly as it is designed in such manner as that the squares upon the state or local ballot to the left of any list of names printed thereon, will come immediately to the left of, and opposite respectively the names printed upon such paster ballot and in such manner as that the state or local ballot will not show when folded that it contains a paster. The voter may then indicate his choice for any office by stamping the square upon the state or local ballot immediately to the left of the name printed upon such paster ballot when pasted. He shall in no other manner attempt to indicate his choice. Any stamps upon the state or local ballot elsewhere shall be deemed a distinguishing mark and render the ballot void. If the ballot contains no distinguishing mark, the election board shall deem and count as the voter's choice the names of the persons upon such paster ballot having the square immediately to the left stamped, and they shall count none other. It shall be unlawful for

any person to use the paster ballot provided for in this section unless he desires to vote for one or more persons for one or more offices respectively to be filled at such election, the names of which person or persons are not printed upon the state or local ballot, as the case may be, as a candidate or candidates for such office or offices respectively. And any paster which contains the names of persons only for the respective offices whose names are printed upon the state or local ballots as candidates for the same offices respectively shall be void and the ticket containing the name shall not be counted. The voter who attempts to use a paster ballot under the provisions of this section must prepare or select a paster ballot containing a complete list of names for every office for whom he desires to vote and must vote for names contained upon the paster and none other. If a state or local ballot contains a paster placed thereon by the voter, as provided for in this section, any stamp upon such state or local ballot other than are on the squares at the left of the paster ballot, shall be deemed a distinguishing mark and render the whole ticket void. Every violation of the provisions of this section by a voter shall be deemed to be an attempt to distinguish his ballot and shall render the same entirely void.

(As amended, Acts 1891, p. 130. In force June 3, 1891.)

6243. (E. S. 1369.) Number in booths—Mutilation of ballots.—

47. Not more than one person shall be permitted to occupy any booth at one time, and no person shall remain in, or occupy a booth longer than may be necessary to prepare his ballot, and in no event longer than five minutes. Not more than three persons other than the election officers shall be permitted to enter, or be in the election-room at any one time, and no voter or person offering to vote shall hold any conversation or communication with any other person than a member of the election board while in the election-room. Any person who shall by accident or mistake spoil, deface or mutilate his ballot may, on returning the same to the poll clerks, and satisfying them that such spoiling, defacing or mutilation was not intentional, receive another in place thereof, and such clerks shall make a minute of the fact on the poll list at the time, and the mutilated ballot shall then be destroyed by the elector in the presence of the board.

(As amended, Acts 1891, p. 132. In force June 3, 1891.)

6244. (E. S. 1370.) Voters unable to read English.—

48. Any elector who declares that by reason of physical disability, or inability to read the English language, he is unable to mark his ballot, may declare his choice of candidates to the poll clerks, who, in the presence of the elector and in the presence of each other, shall prepare the ballots for voting in the manner hereinbefore provided, and on request shall read over to such elector the names of the candidates as marked. Any one making a false declaration under the provisions of this section shall, upon conviction, be fined in any sum not exceeding five dollars, and be disfranchised for a period of five years, and any poll clerk or poll clerks who shall deceive any elector in selecting or mark-

ing any ballot, or mark the same in any other way than as requested by said elector, shall be guilty of felony, and on conviction, shall be imprisoned in the penitentiary for not less than two nor more than five years, and be disfranchised for any determinate period not less than five years.

6245. (E.S.1371.) Distinguishing marks—Penalty.—49. No inspector of election, or judge acting for an inspector, shall deposit any ballot upon which the initials of the poll clerks, as hereinbefore provided for, does not appear, or any ballot on which appears externally any distinguishing mark, defacement or mutilation. If any inspector, judge, poll clerk or other person entrusted with the custody or control of any ballot or ballots, either before or after they have been voted, shall in any way mark, mutilate or deface any ballot, or place any distinguishing mark thereon, either for the purpose of identifying the same (except by numbering protested ballots for future reference), or for the purpose of vitiating the same, he shall be guilty of a felony, and on conviction, shall be imprisoned in the state's prison not more than ten nor less than five years, and fined in any sum not exceeding two thousand dollars.

(As amended, Acts 1891, p. 133. In force June 3, 1891.)

6246. (E. S. 1372.) Removing ballot from election room—Penalty.—50. Any person who shall remove or attempt to remove a ballot or stamp from the election room, or having in his possession outside the election room any ballot or stamp, either genuine or counterfeit, during the election, shall be guilty of felony, and on conviction, shall be imprisoned in the penitentiary not less than two nor more than five years, and be disfranchised for any determinate period not less than ten years.

6247. (E. S. 1373.) Counting and destroying ballots.—51. Immediately on closing the polls, the board shall count all the ballots remaining unvoted, record the number of the same on the tally sheets, and destroy all of such ballots by totally consuming by fire.

6248. (E. S. 1374.) Canvassing votes—Destroying ballots.—52. The board shall then proceed to canvass the votes, beginning first with the state ballots and completing them before proceeding with the local ballots, by laying each ballot upon the table in the order in which it is taken from the ballot box, and the inspector and the judge of the election, differing in politics from the inspector, shall view the ballots as the names of the persons voted for are read therefrom. In the canvass of the votes any ballot which is not endorsed with the initials of the poll clerks, as provided in this act, and any ballot which shall bear any distinguishing mark or mutilation shall be void and shall not be counted, and any ballot or part of a ballot from which it is impossible to determine the elector's choice of candidates, shall not be counted as to the candidate or candidates affected thereby: *Provided, however,* That on protest of any member of the board such ballot, and all disputed ballots shall be preserved by the inspector, and at the close of the count placed with the seals of the ballot packages in paper bags, securely sealed, and so delivered to the clerk of the county with

notification to him of the number of ballots so placed in such bags, and of the condition of the seals of the ballot packages. The poll clerk shall also record on the tally sheets, memoranda of such ballots and the condition of the seal of the ballot packages, and in any contest of election such ballots and seals may be submitted in evidence. On completing the count and recording the same on the tally sheets, all the remaining ballots, except those marked, mutilated or otherwise defective, as in this section hereinbefore described, shall be destroyed by the election board by totally consuming by fire before adjournment, and thereupon the election board shall immediately make a memorandum of the total vote cast for each candidate and deliver a copy thereof to each member of such board. No person other than the members of the election board, poll clerks and election sheriffs, and United States supervisors, if any be appointed, shall be permitted in the election room during the election, except for the purpose of voting or during the canvass of the votes.

(As amended, Acts 1891, p. 133. In force June 3, 1891.)

Ballots should not be rejected from the count because not indorsed by the clerks at the particular place on the ballot specified by the statute. *Parvin v. Wimberg*, 130 Ind. 561.

6249. (E. S. 1375.) Felonies—Penalty.—53. Any person who shall (1) falsely make or fraudulently deface, or fraudulently destroy any certificate or petition of nomination, or any part thereof; (2) file any certificate or petition of nomination, knowing the same, or any part thereof, to be falsely made; or (3) suppress any petition or certificate of nomination which has been duly filed, or any part thereof; or (4) forge or falsely make the official indorsement of any ballot; or (5) print, or cause to be printed, any imitation ballot, or circulate the same; or (6) conspire with others to do any of said acts, or induce, or attempt to induce, any other person to do any of said acts, whether or not said acts, or any of them, be committed, or attempted to be committed, shall be deemed guilty of a felony, and upon conviction thereof, shall be punished by imprisonment in the state penitentiary not less than two nor more than five years, and be disfranchised for any determinate period not less than ten years.

6250. (E. S. 1376.) Felony by clerk, inspector or messenger.—54. Any clerk, inspector or other messenger entrusted with the custody of ballots who shall open any of the packages in which the ballots are contained, or permit any of them to be opened, or destroy any of such ballots, or permit them to be destroyed, or give or deliver any such packages or ballots to any person not lawfully entitled to receive them, as herein provided; or conspire to procure, or in any way aid, abet or connive at any robbery, loss or destruction of any such ballots or packages, shall be guilty of a felony, and on conviction shall be punished by imprisonment in the state prison for not less than three nor more than ten years, and be disfranchised for any determinate period not less than ten years.

6251. (E. S. 1377.) Attempting to enter election-room—Remaining too close to polls—Penalty.—55. If any person not herein authorized so to do shall enter or attempt to enter the election-room, or enter or attempt to enter within the railing leading from the challenge window to the entrance of the election-room without first having been passed by the challengers, or having been sworn in as hereinbefore provided, or shall remain within fifty feet of the polling place, contrary to the provisions hereinbefore made, he shall be guilty of a misdemeanor, and on conviction thereof, be fined not more than five hundred dollars.

6252. (E. S. 1378.) Inducing elector to place distinguishing mark on ballot—Penalty.—56. If any person shall induce, or attempt to induce, any elector to write, paste or otherwise place on his ballot the name of any person or any sign or device of any kind as a distinguishing mark by which to indicate to any other person how such elector has voted, or shall enter into or attempt to form any agreement or conspiracy with any other person to induce or attempt to induce electors, or any elector, to so place any distinguishing name or mark on his ballot, whether or not said act be committed or attempted to be committed, such person so offending shall be guilty of felony, and, on conviction, be imprisoned not more than five nor less than two years in the state's prison.

6253. (E. S. 1379.) Revealing how elector voted—Penalty.—57. If any person, being a member of an election board or otherwise entitled to [the] inspection of the ballots, shall reveal to any other person how any elector has voted, or what other candidates were voted for on any ballot bearing a name not printed thereon by the board of election commissioners, or give any information concerning the appearance of any ballot voted, such person so offending shall be guilty of a felony, and, on conviction, shall be imprisoned not less than two years nor more than five years in the state's prison, and be disfranchised for any determinate period not less than ten years.

6254. (E. S. 1380.) Inducing members of board to violate act—Penalty.—58. If any person shall induce or attempt to induce any member of an election board to violate any of the provisions of section 47 [57], whether or not such member of the election board shall violate or attempt to violate any of the provisions of this act, such person so offending shall be guilty of a felony, and, on conviction, shall be imprisoned in the state's prison not less than two years nor more than five years, and be disfranchised for any determinate period not less than ten years. It shall be the duty of each inspector to distinctly read this and the preceding section to the election board at the opening of the polls, and each member thereof shall thereupon take an oath that he has not violated and will not violate the provisions of said section.

6255. (E. S. 1381.) Removing or destroying election conveniences—Penalty.—59. Any person who shall, during the election, remove or destroy any of the supplies or other conveniences placed in the

booths as aforesaid or delivered to the voter for the purpose of enabling the voter to prepare his ballot, or shall, during an election, remove, tear down or deface the cards printed for the instruction of the voters, or shall, during an election, destroy or remove any booth, railing or other convenience provided for such election, or shall induce or attempt to induce any person to commit any of such acts, whether or not any of such acts are committed or attempted to be committed, shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than six months nor more than one year, and be disfranchised for any determinate period not less than ten years.

6256. (E. S. 1382.) Electioneering—Disclosing vote—Penalty.—60. No officer of election shall disclose to any person the name of any candidate for whom any elector has voted. No officer of election shall do any electioneering on election day. No person whatever shall do any electioneering on election day within any polling place, or within fifty feet of any polling place. No person shall apply for or receive any ballot in any polling place other than that in which he is entitled to vote. No person shall show his ballot after it is marked to any person in such a way as to reveal the contents thereof or the name of any candidate or candidates for whom he has marked his vote; nor shall any person examine a ballot which any elector has prepared for voting or solicit the elector to show the same. No person except the inspector of election, or judge who may be temporarily acting for him, shall receive from any voter a ballot prepared by him for voting. No voter shall receive a ballot from any person other than one of the poll clerks; nor shall any person other than a poll clerk deliver a ballot to an inspector to be voted. No voter shall deliver any ballot to an inspector to be voted, except the one he receives from the poll clerk. No voter shall place any mark upon his ballot or suffer or permit any other person to do so, by which it may be afterward identified as the one voted by him. Whoever shall violate any provision of this section shall be deemed guilty of a felony, and on conviction shall be punished by imprisonment for not less than six months nor more than one year, and by fine of not less than one hundred dollars nor more than five hundred dollars, and be disfranchised for any determinate period not less than ten years.

6257. (E. S. 1383.) Violation of duty by officer—Penalty.—61. Any public officer upon whom any duty is imposed by this act, who shall willfully neglect or omit to perform such duties, or do any act prohibited herein for which punishment is not otherwise herein provided, shall be deemed guilty of a felony, and, on conviction, shall be punished by imprisonment in the state's prison for not less than six months nor more than three years, or by a fine of not more than three thousand dollars, or by both such fine and imprisonment, and be disfranchised for any determinate period not less than ten years.

6258. (E. S. 1384.) Constitutional amendment—How voted on.—62. Whenever any constitutional amendment or other question is re-

quired by law to be submitted to popular vote, if all the electors of the state are entitled to vote on such question, the state board of election commissioners shall cause a brief statement of the same to be printed on the state ballots, and the words "yes" and "no" under the same, so that the elector may indicate his preference by stamping at the place designated in front of either word. If the question is required by law to be voted on by the electors of any district or division of the state, the board or boards of election commissioners of the county or counties including or included in such division or district, shall cause similar provision to be made on the local ballots. In case any elector shall not indicate his preference by stamping in front of either word, the ballot as to such question shall be void and shall not be counted.

6259. (E. S. 1385.) Preserving affidavits.—63. All affidavits provided in this act to be used on the day of election at the several polling places shall, at the close of the count, be placed in a strong paper bag, or envelope, by the election board and securely sealed by them, each member indorsing his name on the back of such bag or envelope. Such bag or envelope shall be delivered within three days after the election, by the inspector to the clerk of the circuit court of the county, whose duty it shall be to carefully preserve the same, and deliver it, with the seal unbroken, to the foreman of the grand jury when next in session. It shall be the duty of such grand jury to inquire into the truth or falsity of such affidavits.

6260. (E. S. 1386.) Township and county elections.—64. When any township or county holds an election at a time other than the time of a general election, such election shall be held in conformity with the provisions of this act, and all county and local officers who are required to perform any duties in connection with the general election shall perform the same duties in connection with such special or local election, subject to the same provisions and penalties herein prescribed in case of general elections.

6261. (E. S. 1387.) Town and city elections.—65. Where any town or city shall hold an election at any time other than a time of a general election, such election shall be held in conformity with the provisions of this act, except the duties herein required of the county clerk shall be performed by the town or city clerk; the duties herein required of the board of county commissioners shall be performed by the town trustees or city council; the duties of the county sheriff shall be performed by the town marshal or chief of police, and the rights of nomination of election officers by political parties shall be exercised by the chairman of the town or city committees of such parties, if any such there be. Town and city officers are hereby required to perform the various duties herein prescribed for the county officers in whose stead they act, subject to the same penalties and provisions herein prescribed as to such county officers. The town and city boards of election commissioners shall provide the necessary stamps and ink pads for such elections, and shall cause as many classes of ballots to be printed as there are wards or districts entitled to separate officers, bal-

lots of each class having printed uniformly on the back of the same, the name or number of the ward or district in which it is to be used, and containing the names of all lawfully nominated candidates for all officers that the voters of such ward or district are entitled to vote for at such election. The commissioners of county and trustees of townships in which such towns or cities are situated shall furnish what is necessary for use in such elections of the election furniture in their custody: *Provided*, That such town or city shall pay the expense of moving such furniture to and from the polling places, and also for any damage to, or loss of such furniture. The boards of town or city election commissioners shall perform all the duties in providing and preparing polling places that are required of county commissioners in county elections, subject to the same provisions and penalties.

(As amended, Acts 1891, p. 134. In force June 3, 1891.)

6262. (E. S. 1388.) **Legal holiday.**—66. All election days shall be legal holidays throughout the district or municipality in which the election is held.

6263. (E. S. 1389.) **Laws repealed.**—67. All laws and parts of laws inconsistent with the provisions of this act are hereby repealed, *pro tanto*: *Provided, however*, That nothing in this act contained shall impair the effect of any such act as to any offense heretofore committed under existing laws: *And provided, further*, That the provisions of this act shall not apply to any election to be held prior to the first Monday in June, 1890, and all elections to be held prior to said date of the first Monday in June, 1890, shall be held and conducted under the provisions of the laws now in force, and all elections to be held after the first Monday in June, 1890, shall be provided for and held under the provisions of this act.

[1881 S., p. 432. In force September 19, 1881.]

6264. (4707.) **Duty of board.**—29. No inspector, clerk or judge of any election shall vote after commencing to count the votes, nor publish any statement of the result of the counting until such election is closed.

6265. (4708.) **Adjournments forbidden.**—30. After the opening of the polls at any election in this state, no adjournment shall be had nor any recess taken until all the votes cast at such election shall have been counted, and the result publicly announced.

6266. (4709.) **Meals for election officers.**—31. It shall be the duty of the township trustees, in their respective townships, to cause the members of the election board in each township or precinct to be furnished with good, plain and substantial meals, at the regular hours for meals, during the election day and until the count is finished, but no spirituous, vinous or fermented liquors shall be furnished. Such trustees shall be allowed, and paid, by the county board the actual cost of such meals, in their next regular account.

Section 4710, R. S. 1881, relating to the counting of ballots, is omitted. Such section was amended by act of 1885 (Acts 1885, p. 153; Ell. Sup., § 1322), but such section is superseded by section 52 of the act of 1889, *ante*, section 6248.

Section 4711, R. S. 1881, relating to witnesses to the counting of votes, is omitted as being superseded by the act of 1889.

6267. (4712.) Certificate of judges.—34. When the votes shall be counted, the board of judges shall make out a certificate, under their hands, stating the number of votes each person has received, and designating the office; which number shall be written in words; and such certificate, together with one of the lists of voters and one of the tally-papers, shall be deposited with the inspector, or with one of the judges selected by the board of judges.

6268. (4713.) Care of ballots and papers.—35. As soon as the votes are counted, and before the certificate of the judges, as prescribed in the foregoing section, is made out, the ballots, with one of the lists of voters and one of the tally-papers, shall, in the presence of the judges and clerks, be carefully and securely placed by the inspector, in the presence of the judges, in a strong and stout paper envelope or bag, which shall then be tightly closed and well sealed with wax by the inspector, and shall be delivered by such inspector to the county clerk at the very earliest possible period before or on the Thursday next succeeding said election; and the inspector shall securely keep said envelope containing the ballots and papers therein, and permit no one to open said envelope or touch or tamper with said ballots or papers therein. And upon the delivery of such envelope to the clerk, said inspector shall take and subscribe an oath, before said clerk, that he has securely kept said envelope and the ballots and papers therein, and that, after said envelope had been closed and sealed by him in the presence of the judges and clerks, he had not suffered or permitted any person to break the seal or open said envelope, or touch or tamper with said ballots or papers, and that no person has broken such seal or opened said envelope to his knowledge; which oath shall be filed in said clerk's office with the other election papers.

6269. (4714.) Clerk's and trustee's duties.—36. The clerk shall securely keep said envelope, so sealed, with the ballots and papers therein, in the same condition as it was received by him from the inspector, in his office (unless opened by said inspector, in the presence of the board of canvassers, as herein provided), for the period of six months. But when such election is contested, he shall preserve them so long as such contest is undetermined, subject to the order of the court trying such contest: *Provided*, That said inspector shall, after sealing said envelope containing such ballots and one of his poll books and tally papers, plainly mark said envelope upon the outside, in ink, with the name, number and township. And after each election the ballot box herein provided for shall be, by said inspector, deposited with the township trustee of the township in which his precinct is situate, for safe keeping. And said officers of election shall, upon receiving the pay for their services as such from said township trustee, deliver to him the keys to said ballot box in their custody.

6270. (4715.) Board of canvassers.—37. The inspectors of each township or precinct, or the judges of election to whom the certificates,

poll books and tally papers shall have been delivered, as provided for in this act, shall constitute a board of canvassers, who shall canvass and estimate the certificates, poll lists and tally papers returned by each member of said board; for which purpose they shall assemble at the court-house on the Thursday next succeeding such election, between the hours of 10 A. M. and 6 o'clock P. M.

6271. (4716.) Officers of board.—38. The members of such board who shall assemble at such time and place shall select one of their number as chairman, and the clerk of the circuit court shall act as their clerk.

6272. (4717.) Duties of board.—39. Such board, when organized, shall carefully compare and examine the papers intrusted to it, and aggregate and tabulate from them the vote of the county; a statement of which shall be drawn up by the clerk, and shall contain the names of the persons voted for, the office, the number of votes given in each township and precinct to each person, the number of votes given to each in the county, and also the aggregate number of votes given; which statement shall be signed by each member of said board; which canvass sheet, together with such certificates, poll books and tally papers shall be delivered to the clerk, and by him filed in his office. The same shall be preserved by him, open to the inspection of any legal voter of the county, or district, or state.

The duties of the board of canvassers are ministerial, and the board can not hear evidence as to irregularities at an election. *Moore v. Kessler*, 59 Ind. 152.

If the members of a board of canvassers fail to properly perform their duties they will be liable to the parties injured. *Moore v. Kessler*, 59 Ind. 152.

6273. (4718.) Certificate.—40. Such board shall declare the person having the highest number of votes given for any office to be filled by the voters of a single county duly elected to such office, and certify the same in the statement above required.

The statement made by the board of canvassers of the result of an election is only *prima facie* evidence of the fact. *Reynolds v. State, ex rel.*, 61 Ind. 392; *State, ex rel., v. Shay*, 101 Ind. 36.

6274. (4719.) Tie-vote.—41. If two or more persons shall have the highest and an equal number of votes for a single office to be filled by the voters of a single county, such board shall forthwith declare that no person is elected to fill such office, and shall certify the same in its statement; and, when filed, the clerk shall certify that fact to the tribunal whose duty it is to supply vacancies in such office or to issue a writ of election to fill the same, as the case may require.

See section 6292.

Failure on the part of officers to perform their duties when there is a tie-vote will not oust the incumbent of the office or render the same vacant. *State, ex rel., v. McMullen*, 46 Ind. 307.

The legislature may provide that when there is a tie-vote the result may be determined other than by a new election. *Johnson v. State, ex rel.*, 128 Ind. 16.

Officers may be compelled by mandate to perform the duties required of them by law in case of a tie-vote. *Johnston v. State, ex rel.*, 128 Ind. 16.

6275. (4720.) Defective papers—Duty of board.—42. No tally-paper, poll-book or certificate returned from any election by the board of judges thereof, shall be rejected for want of form nor for lack of being strictly in accordance with the directions herein contained, if the same can be satisfactorily understood; and such board of canvassers shall, in no case, reject the returns from any precinct if the same be certified by the board of election of that precinct, as required by law, and presented to them by the inspector or one of the judges of said board.

6276. (4721.) Certificate of election.—43. Where any person is elected to an office by the voters of a county not to be commissioned by the governor, the clerk of the circuit court shall, after ten days from the time the board of canvassers has made its return, make out and deliver, on demand, to such person, a certificate of his election; and in case where any officer is to be commissioned by the governor, he shall make out a statement, under his hand and the seal of his court, specifying the number of votes given to each person for each office, and who has been declared elected, and shall transmit the same, by mail, to the secretary of state, within the time aforesaid.

A clerk may be compelled by mandate to certify the result of an election. It is his duty to make the certificate when the election is irregular if the same is not void. *State, ex rel., v. Jones*, 19 Ind. 356.

This section is not applicable to township elections. *DeArmond v. State, ex rel.*, 40 Ind. 469.

6277. (4722.) Defective returns—Commissions.—44. No commissions shall be withheld by the governor on account of any defect or informality in the return of any election to the office of the secretary of state, if it can, with reasonable certainty, be ascertained from such return what office is intended and who is entitled to such commission.

6278. (4723.) Certificate of votes for legislators.—45. When two or more counties compose a district to elect a senator or representative, the clerks of the circuit courts of such counties, on the day next succeeding the return day of such election, shall make out a certificate of votes received by each individual for senator or representative, and deliver the same to the sheriff.

6279. (4724.) Certificate of election of legislators.—46. Such sheriffs shall meet on the Wednesday next following the return-day of such election, between the hours of one and six of the afternoon, at the court-house of the oldest county in such district, where they shall compare the certificates delivered to them by the clerks, and shall jointly make out and transmit to the person having the highest number of votes for senator or representative a certificate of his election. The county first organized (or, if two or more were organized at the same session, then the county having, by the auditor of state's last report, the highest number of taxable polls) shall be deemed the oldest.

6280. (4725.) Tie-vote for legislators.—47. If, in such case, any two or more persons shall have the highest and an equal number of votes for the same office, such sheriffs shall certify that fact to the

clerk of the circuit court of the county in which such sheriffs shall have compared such votes, and such clerk shall forthwith certify the same to the governor.

6281. (4726.) Certificate to secretary of state.—48. Clerks of the circuit court, on the day succeeding the return-day of such election, shall make out, in words, certified statements, officially sealed, of the number of votes given to each person for governor and lieutenant-governor, for representative in congress, judges of the supreme and circuit courts, clerk of the supreme court, reporter of the decisions of the supreme court, prosecuting attorney, superintendent of public instruction, secretary, auditor, and treasurer of state, and for senator and representative in the general assembly, and shall deliver the same to some postmaster of the county, to be transmitted, by mail to the secretary of state, taking from such postmaster, and filing, a certificate setting forth particularly the time when such certified statement was deposited in such post-office.

6282. (4727.) Duty of secretary of state.—49. The secretary of state shall, in the presence of the governor, compare and estimate the number of votes given for judges of the supreme court, reporter of the decisions of the supreme court, clerk of the supreme court, secretary, auditor and treasurer of state, and superintendent of public instruction, and certify to the governor the persons receiving the highest number of votes for such offices, and also compare and estimate the number of votes given for judges of the circuit court and prosecuting attorneys, and certify to the governor the persons having received the highest number of votes in their respective districts; and, thereupon, the governor shall transmit, by mail, to such persons their commissions.

6283. (4728.) Secretary of state and governor, as to congressmen.—50. The secretary of state, as soon as he shall receive such certified statements, shall compare and estimate the votes given for representatives in congress, and certify to the governor the persons having the highest number of votes as duly elected; and the governor shall give to each of the persons returned to him, as aforesaid, a certificate of his election, sealed with the seal, and attested by the secretary of state: *Provided*, That no return of any county which has come into his hands, and which has been duly authenticated by the clerk thereof, under seal, as hereinbefore provided, shall be rejected by said secretary of state, but he shall estimate, aggregate and tabulate, and report to the governor the total number of votes cast in each county for each candidate for state office, supreme judge or other officer to be elected by all the voters of the state, and members of congress, as evidenced to him by the face of such returns so certified to him.

6284. (4729.) Clerk's duty as to election of governor.—51. Each clerk of the circuit court shall, on the day following the return-day of an election for governor and lieutenant-governor, make out, at full length, two certified statements, under the seal of his court, of the number of votes each candidate received; one of which he shall trans-

mit to the speaker of the house of representatives of the next general assembly, by his senator or representative, who shall deliver the same to such speaker on or before the second day of the session, and the other certified statement shall be transmitted by mail to Indianapolis, directed to said speaker, and to the care of the secretary of state, by whom the same shall be delivered to the speaker on or before the second day of the session.

The courts have no authority to prevent or control the secretary of state as to the delivery of election returns relating to the election of governor and lieutenant-governor to the speaker of the house of representatives. *Smith v. Myers*, 109 Ind. 1.

6285. (4730.) Pay of officers.—52. Each inspector, judge and clerk of any election shall be allowed and paid two dollars for each day's service while attending such election and performing the duties of his office; and the same rate for one day's services, and mileage at the rate of five cents per mile, going and returning, shall be allowed and paid to each member of the board of canvassers.

ARTICLE 2.—SPECIAL ELECTIONS.

SEC.

6286. When to be held.

6287. When governor to order.

SEC.

6288. Notice by sheriff.

6289. How conducted.

[1881 S., p. 482. In force September 19, 1881.]

6286. (4731.) When to be held.—53. A special election shall be held in the following cases:

First. Whenever a vacancy shall occur in the office of senator or representative during a session, or when the legislature will be in session after the occurrence of a vacancy and before a general election.

Second. Whenever a vacancy shall occur in the office of representative in congress while in session, or when congress will be in session after such vacancy occurs and before a general election.

Third. Whenever two or more persons receiving votes at any election shall have the highest and an equal number of votes for the same office.

Fourth. Whenever a vacancy occurs in any office required to be filled at a special election.

6287. (4732.) When governor to order.—54. Special elections not otherwise provided for shall be ordered by the governor, who shall issue a writ or writs of election, directed to the sheriff or sheriffs of the proper county or counties; and such writ shall specify the county, district or circuit in which such election is to be held, the cause and object of such election, the name of the person whose office is vacant, and the day on which such election shall be held; which day shall be the same in case such election is held in a district or circuit formed of two or more counties.

6288. (4733.) Notice by sheriff.—55. The sheriffs who receive such writs ordering a special election shall give the same notice thereof as is required of general elections: *Provided*, Such notice may be set up and published ten days only.

6289. (4734.) How conducted.—56. All special elections shall be conducted, returned, certified and canvassed, and certificates and commissions shall issue, and shall in all respects be governed by the provisions of this law regulating general elections, so far as applicable.

ARTICLE 3.—TOWNSHIP ELECTIONS.

SEC.	SEC.
6290. When held.	6292. Canvass—Inspector's duties—Tie vote.
6291. Ballots and ballot boxes.	6293. Certificates.

[Acts 1893, p. 192. In force May 18, 1893.]

6290. When held.—1. That the time of holding the election of township trustees, justices of the peace, assessors, constables, road supervisors and such other officers of township as may be provided for by law, shall be changed from the April election, and all such township officers shall be elected at the general election to be held on the first Tuesday after the first Monday in November, 1894, and every four years thereafter, and which election shall be conducted by the provisions of the law governing said general election.

This section supersedes section 4735, R. S. 1881.

6291. Ballots and ballot boxes.—2. The names of the different candidates for said township offices shall be printed on separate ballots of a yellow color, and deposited in separate ballot boxes from that of the state and county ballots; said ballot boxes shall be painted yellow and said ballots and ballot boxes shall be prepared in conformity with the law governing said general election.

The expenses of township elections are to be paid by the county. Board v. Center Tp., 107 Ind. 584.

[1881 S., p. 482. In force September 19, 1881.]

6292. (4736.) Canvass—Inspector's duties—Tie vote.—58. The board of judges shall count the votes given for each person for each office, and certify the result, and the inspector shall file one of the poll books and tally sheets, with ballots on a string, in the clerk's office of the county, within ten days after such election. If two or more have the highest and an equal number of votes for the same office, such judges shall, when the result is certified, determine by lot the person entitled to the office; and the next day, the inspectors shall make out and deliver to the person elected, when demanded, a certificate for each person elected to any office in said township, except justices of the peace: *Provided*, That if there be more than one precinct in said township, then the inspectors of the several precincts shall meet, on the day following the election, at the office of the township trustee, at as near 10 o'clock A. M. as is practicable, and compare the poll books and certificates thereto held by them, and having aggregated the vote of the township, declare and certify the result; and if two or more persons have the highest and an equal number of votes for the same office, they shall determine by lot which shall be declared elected, and give a certificate accordingly.

See section 6248.

The legislature has power to provide that where there is a tie-vote the result shall be determined by lot. *Johnston v. State, ex rel.*, 128 Ind. 16.

If there is a tie-vote, and the election officers adjourn without having a selection made by lot, they may be compelled by mandate to re-assemble and perform their duties. *Johnston v. State, ex rel.*, 128 Ind. 16; *Kimerer v. State, ex rel.*, 129 Ind. 589.

If a township trustee in office, and a candidate for re-election has a tie-vote with his opponent, and such trustee refuses to determine the result by lot, he does not thereby forfeit his office so that a successor may be appointed. *State, ex rel., v. McMullen*, 46 Ind. 307.

6293. (4737.) Certificates.—59. Such certificate shall entitle the holder to qualify and enter upon the discharge of the duties of the office to which he is elected at the expiration of ten days from the day of such election, except that of township trustee and township assessor, who shall enter upon the duties of their offices on the first Monday of August following such election, and also except that the certificates of election of justices of the peace shall be forwarded by the inspector aforesaid to the clerk of the circuit court, who shall certify the result for that office to the secretary of state.

(As amended, Acts 1889, p. 344. Ell. Supp., section 1395. In force May 10, 1889.)

In computing the ten days mentioned in this section, the day of the election is excluded. *Vogel v. State, ex rel.*, 107 Ind. 374.

This section had the effect of continuing certain officers in office until their successors could qualify, although such officers might not have been eligible to re-election. *State, ex rel., v. Bogard*, 128 Ind. 480.

ARTICLE 4.—RECOUNTING.

SEC.

- 6294. When candidate may have.
- 6295. Proceedings to obtain.
- 6296. Order for recounting — How conducted.

SEC.

- 6297. Certificate of recount.
- 6298. Adjournments forbidden — Pay — Ballots, how preserved.

[1881 S., p. 482. In force September 19, 1881.]

6294. (4738.) When candidate may have.—61. At any time within ten days after the Thursday next succeeding any election, any candidate for office at such election, desiring to contest the same, may petition, in writing, the circuit court, if in session, or the judge thereof in vacation, for a recount of the ballots cast at such election, by three commissioners, appointed by the court or judge, two of whom shall be from different political parties: *Provided*, That such appointments shall be made from the political parties which cast the highest number of votes at the last preceding general election.

6295. (4739.) Proceedings to obtain.—62. Upon the petition of such candidate, duly verified, showing that he desires to contest such election, and honestly believes that there was a mistake or fraud committed in the official count, and that he desires a recount of the ballots cast at said election for the office for which he was a candidate, and upon proof that he has served a written notice upon the opposing candidate of the time and place of such application, five days before the

hearing, and upon his furnishing a written undertaking, with sufficient freehold surety, that he will pay all the costs of such recount, the court or judge shall grant the prayer of said petition and order said recount to be made.

6296. (4740.) Order for recounting—How conducted.—63. In appointing such commissioners to make said recount, the court shall fix the time within which the same shall commence, not exceeding twenty days thereafter, and the clerk of the circuit court shall act as the clerk of said commissioners. The order shall provide that each of the candidates may be present during said recount; and two qualified voters of the county, selected by each of said candidates, may also be present, who may witness the recount of the vote; and such witnesses shall conduct themselves in a quiet and orderly manner, and shall not interrupt said commissioners while in the discharge of their duties. Such order shall be entered on the order-book of the circuit court.

6297. (4741.) Certificate of re-count.—64. When said re-count is finished, the commissioners, or a majority of them, shall make out a certificate, under their hands, stating the number of votes that each of said candidates has received for said office in each township and precinct, and which of said candidates, as shown by the said re-count, received the highest number of votes, and what his majority or plurality was; and said certificate shall be filed with the clerk of the circuit court and recorded in the order-book of said court. Such certificate, or the record thereof, may be used as evidence of the facts therein recited upon the trial of any contest of said election between said candidates.

Such certificate is competent evidence in an action by information to contest the title to the office. State, *ex rel.*, v. Shay, 101 Ind. 36.

6298. (4742.) Adjournments forbidden—Pay—Ballots, how preserved.—65. No adjournment shall be had until said re-count is finished and said certificate is made out and filed. Said commissioners shall each be allowed, and paid by said petitioner, at the rate of three dollars per day, each, for their services. Said clerk shall, as soon as such re-count is completed, replace said ballots in the ballot-boxes, securely lock and seal them, and keep them as above provided. For his services in the matter of such re-count, said clerk shall receive from such petitioner the sum of five dollars.

ARTICLE 5.—CONTEST.

SEC.

- 6299. Who may contest.
- 6300. Contest for state office.
- 6301. Notice.
- 6302. Committee to try—Powers.
- 6303. Contesting seat of legislator.
- 6304. Depositions.
- 6305. Notice to contestee.
- 6306. Powers of justices.

SEC.

- 6307. Vacancy.
- 6308. Meeting of justices—Their duty.
- 6309. Clerk's duty.
- 6310. Duty of secretary of state.
- 6311. Depositions, when read.
- 6312. Causes for contest.
- 6313. Election, when not set aside.
- 6314. Contest for local offices.

SEC.

6315. Notice by auditor to clerk.
 6316. Notice to county board and contestee.
 6317. Subpoenas—Trial of contest.
 6318. Appeals.
 6319. Duty of court on appeal.

SEC.

6320. Voters compelled to testify.
 6321. Fees and costs.
 6322. Commissioner to take testimony.
 6323. Contest for municipal offices.
 6324. Appeal to supreme court.

[1881 S., p. 482. In force September 19, 1881.]

6299. (4743.) Who may contest.—66. The election of any person declared elected by popular vote to any office, whether state, county, township or municipal, may be contested by any elector who was entitled to vote for such person. The person contesting such election shall be known as the contestor; the person whose election is contested, as the contestee.

6300. (4744.) Contest for state office.—67. When such elector may choose to contest the election of any state officer, elective by the people, he shall, within twenty days after the first day of the next session of the general assembly thereafter, deliver to the presiding officer of the house of representatives specifications of the grounds of such contest; which specification shall be verified by the affidavit of such electors.

6301. (4745.) Notice.—68. As soon as such presiding officer receives such specifications, he shall make out a notice of contest, which, together with a copy of the specifications, he shall cause to be directed and delivered to the person whose election is contested; and shall immediately give notice to both houses that such specifications have been received.

6302. (4746.) Committee to try—Powers.—69. Each house shall choose, by a *viva voce* vote, seven members of its own body; and the members thus selected shall constitute a committee to try and determine such contested election; and for that purpose shall hold their meetings publicly, at the capitol, at such time and place as they may designate, and may adjourn from day to day, or to a day certain, until such trial shall be determined. They shall have power to send for persons and papers and to take all necessary means to procure testimony, extending like privileges to the contestor and the contestee; and shall report their judgment in the premises to both branches of the general assembly; which report shall be entered on the journals of the respective houses, and the judgment of such committee shall be conclusive. If such election be adjudged invalid, such office shall be vacant.

6303. (4747.) Contesting seat of legislator.—70. Any such elector who may choose to contest the election of any person declared elected to a seat in the senate or house of representatives shall, within ten days after such election, file with the clerk of the circuit court of the county in which the alleged cause of contest originated, a statement of the grounds of contest on which he relies, and that he was entitled to vote at such election, verified by his affidavit.

6304. (4748.) Depositions.—71. When such statement shall be

filed, such clerk shall issue a commission directed to two justices of the peace of his county, not of kin to the contestor, nor to any person who was a candidate at such election for the office the election to which is contested, to meet at such time and place as shall be specified in such commission, not less than twenty nor more than thirty days from the time of issuing the same, for the purpose of taking the depositions of witnesses.

6305. (4749.) Notice to contestee.—72. Written notice of such contest, specifying the time and place of taking depositions and before whom to be taken, and a copy of such statement, certified by such clerk, shall, within ten days after such statement shall have been filed, be delivered to the contestee, or, if he can not be found, shall be left at his last and usual place of residence by the sheriff of the county, who shall return to such clerk a certified copy of such notice, with the manner and time of service indorsed thereon, for which he shall receive from the contestor the same fees allowed in writs of summons.

6306. (4750.) Powers of justices.—73. Either of such justices shall have power to issue subpoenas, to be served by the sheriff; and when met at the time and place appointed to take depositions, shall have the same power to issue attachments and assess fines against witnesses as is given to justices in the trial of suits instituted before them.

6307. (4751.) Vacancy.—74. If either of the justices first appointed becomes unable to proceed in such examination, such clerk shall fill the vacancy with any other justice of the county.

6308. (4752.) Meeting of justices—Their duty.—75. Such justices shall meet at the time and place appointed, take and certify such depositions as in other cases, and may adjourn from time to time, and when the same is closed, shall deliver the depositions, with the commission, to such clerk.

6309. (4753.) Clerk's duty.—76. Such clerk shall seal up the depositions, original statement of the grounds of contest, the copy of the notice served on the contestee, and the commission issued to such justices, indorse thereon the names of the contesting parties and the branch of the legislature before which such contest is to be tried, and transmit the same, by mail, to the secretary of state.

6310. (4754.) Duty of secretary of state.—77. The secretary of state, on or before the second day of the session of the general assembly held next thereafter, shall deliver such depositions to the presiding officer of the proper house, who shall immediately lay the same before such house.

6311. (4755.) Depositions, when read.—78. At any time after notice of contest, and before final determination, either party may take depositions to be read on the trial, under the rules regulating the taking of depositions to be read in the circuit court, and such depositions shall be sent, by mail, to the secretary of state, who shall deliver the same, unopened, to the presiding officer of the proper house.

6312. (4756.) Causes for contest.—79. Any election, the contest of which is provided for in this act, may be contested for any of the following causes:

First. For irregularity or malconduct of any member or officer of the proper board of judges or canvassers.

Second. When the contestee was ineligible.

Third. When the contestee, previous to such election, shall have been convicted of an infamous crime, such conviction not having been reversed nor such person pardoned at the time of such election.

Fourth. On account of illegal votes.

A mistake in the count of the votes, or in certifying to the same, is cause for contest. *Dobyns v. Weadon*, 50 Ind. 298; *Hadley v. Guttridge*, 58 Ind. 302.

Under the election law of 1889, if the voter denotes his choice for a candidate by stamping the square in front of his name, the stamp must touch the square, and if it does not the ballot can not be counted. *Parvin v. Wimberg*, 130 Ind. 561.

If but one of the persons voted for at an election is eligible to hold the office, he is entitled to the same, although the ineligible person received the most votes. *Gulick v. New*, 14 Ind. 93; *Price v. Baker*, 41 Ind. 572; *Jeffries v. Rowe*, 63 Ind. 592; *State, ex rel., v. Johnson*, 100 Ind. 489; *Copeland v. State, ex rel.*, 126 Ind. 51.

6313. (4757.) Election, when not set aside.—80. No irregularity or malconduct of any member or officer of a board of judges or canvassers shall set aside the election of any person, unless such irregularity or malconduct was such as to cause the contestee to be declared elected when he had not received the highest number of legal votes; nor shall any election be set aside for illegal votes, unless the number thereof given to the contestee, if taken from him, would reduce the number of his legal votes below the number of legal votes given to some other person for the same office.

Irregularities in the holding of elections that do not deprive legal voters of their right to vote, or permit illegal votes to be cast, will not usually affect the validity of an election. *Railroad Co. v. Geiger*, 34 Ind. 185; *Gass v. State, ex rel.*, 34 Ind. 425; *Dobyns v. Weadon*, 50 Ind. 298; *Mustard v. Hoppess*, 69 Ind. 324; *Parvin v. Wimberg*, 130 Ind. 561.

6314. (4758.) Contest for local offices.—81. All contests for county and township offices shall be tried in the proper county; and all contests for district and circuit offices, not otherwise provided in this act, shall be tried in the county giving the largest vote for such office at such election; and whenever any elector shall choose to contest such election, he shall file with the auditor of the proper county, within ten days after such person has been declared elected, a written statement specifying the grounds of contest, verified by the affidavit of such elector.

The affidavit to the statement of contest must be made by the contestor. *Holton v. Brown*, 46 Ind. 122.

The affidavit may be made on information and belief. *Curry v. Baker*, 31 Ind. 151.

The county auditor may administer the oath to the contestor that is made to the statement of contest. *Wheat v. Ragsdale*, 27 Ind. 191; *Curry v. Miller*, 42 Ind. 320.

The statement of contest need not set forth the names of the persons casting illegal votes. *Wheat v. Ragsdale*, 27 Ind. 191.

If the statement filed by the contestor shows that he received a majority of the legal votes cast, it will be sufficient. *Nickols v. Ragsdale*, 28 Ind. 131; *Dobyns v. Weadon*, 50 Ind. 298.

A demurrer to the statement of contest for the want of facts will not test the sufficiency of the affidavit. *Curry v. Miller*, 42 Ind. 320.

If the contestee files a statement showing that he received a majority of the legal votes cast, it will be a sufficient answer. *Allen v. Crow*, 48 Ind. 301; *Dobyns v. Weadon*, 50 Ind. 298.

The contestee need not make oath to his statement of defense. *Allen v. Crow*, 48 Ind. 301.

If the cause of contest is the ineligibility of the contestee, the proceedings can not be commenced until after the time has arrived for the beginning of the term of office. *Brown v. Goben*, 122 Ind. 113.

The title and right of possession to an office may be tried on proceedings by information and *quo warranto*. *Reynolds v. State, ex rel.*, 61 Ind. 392; *State, ex rel., v. Long*, 91 Ind. 351; *State, ex rel., v. Shay*, 101 Ind. 36; *Vogel v. State, ex rel.*, 107 Ind. 374; *Griebel v. State, ex rel.*, 111 Ind. 369.

The title of the governor or lieutenant-governor to their offices can not be tested by *quo warranto* proceedings. *Robertson v. State, ex rel.*, 109 Ind. 79.

Mandamus will not lie to try title to an office, but possession may be obtained by such proceeding when the title is not in dispute. *Mannix v. State, ex rel.*, 115 Ind. 245.

6315. (4759.) Notice by auditor to clerk.—82. When such statement is filed with the auditor of the proper county, he shall immediately give notice, in writing, to the clerk of the circuit court, that the election to such office is contested; and when the office of county auditor is contested, such statement shall be filed with the clerk, who shall do the duties otherwise required by this act of the auditor. The filing of such statement shall be notice to him.

6316. (4760.) Notice to county board and contestee.—83. When such statement is filed with the auditor, he shall issue a notice to the board of county commissioners to meet at the court-house at a designated time, not less than ten nor more than twenty days thereafter, to try such contested election, and shall issue a notice to the contestee to appear at the time and place specified in the notice to the commissioners, which, with a copy of such statement, shall be delivered to the sheriff of the county, who shall, within five days thereafter, serve the same on the contestee, by delivering to him a copy of such notice and statement or leaving a copy thereof at his last usual place of residence.

If the notice and service is sufficient to inform the contestee that a proceeding has been instituted against him in the commissioners' court, it will be sufficient, overruling *State, ex rel., v. Hudson*, 37 Ind. 198. *Hadley v. Gutridge*, 58 Ind. 302.

6317. (4761.) Subpœnas—Trial of contest.—84. The auditor, at the request of either party, shall issue subpœnas, which shall be served by the sheriff. Such board of commissioners shall try and determine such contest, and shall have power to compel the attendance of witnesses, to swear and examine the same, to punish contempts as other courts, to adjourn or continue the trial from time to time, not exceeding twenty days altogether; to make the necessary orders for the payment of costs, and to coerce the payment of the same, and shall be

governed in such trial by the rules of law obtaining in circuit courts. And if it be proved that any other person than the contestee has the highest number of legal votes, such board shall declare such person elected, and certify the same to the proper officer.

The county board is governed by the rules of law obtaining in the circuit court, upon the hearing of proceedings to contest an election. *Hadley v. Guttridge*, 58 Ind. 302.

If the hearing of the cause is postponed to a time more than twenty days after the time set for the hearing to begin, the cause will be discontinued. *English v. Dickey*, 128 Ind. 174.

The official entries of the election officers are competent evidence on the hearing. *State, ex rel., v. Shay*, 101 Ind. 36.

When the ballots are preserved they are the best evidence of their contents, but in case of their loss or destruction a voter may testify for whom he voted. *Wheat v. Ragsdale*, 27 Ind. 191; *Reynolds v. State, ex rel.*, 61 Ind. 392; *State, ex rel., v. Shay*, 101 Ind. 36; *Pedigo v. Grimes*, 113 Ind. 148.

Unless it appears that a voter cast an illegal ballot, he can not be compelled to testify for whom he voted. *Pedigo v. Grimes*, 113 Ind. 148.

The contestor may show that on account of fraud, or other improper action of the election officers, there were more votes counted for the contestee than he was entitled to. *Pedigo v. Grimes*, 113 Ind. 148.

Ballots cast for a person not eligible to hold the office, are not to be considered in determining the rights of the contestor to the office. *Gulick v. New*, 14 Ind. 93; *Price v. Baker*, 41 Ind. 572; *Jeffries v. Rowe*, 63 Ind. 592; *State, ex rel., v. Johnson*, 100 Ind. 489; *Copeland v. State, ex rel.*, 126 Ind. 51.

6318. (4762.) Appeals.—85. Appeals may be taken herein, as from other decisions of such board: *Provided*, That the same be taken within ten days.

An appeal can not be dismissed for delay of the auditor in filing the transcript and papers upon an appeal. *Day v. Herod*, 33 Ind. 197.

The appeal will not be dismissed because the bond is made payable to the state. *Corey v. Lugar*, 62 Ind. 60.

The cause stands for trial in the circuit court as an original action. *Manlove v. Pavy*, 33 Ind. 505.

A trial by jury can not be demanded. *Corey v. Lugar*, 62 Ind. 60; *Pedigo v. Grimes*, 113 Ind. 148.

6319. (4763.) Duty of court on appeal.—86. If upon such appeal the circuit court confirm such election, a certificate thereof shall issue; if such election be annulled, and no other person declared elected to the same office, it shall be declared vacant.

It is not proper for the circuit court to remand the cause to the county board for trial, but a final disposition must be made of the cause in the circuit court. *Manlove v. Pavy*, 33 Ind. 505.

6320. (4764.) Voters compelled to testify.—87. Any witness who voted at such election, when called to testify in any such case, shall be required to answer touching his qualifications; and if he was not a qualified elector he shall be required to answer for whom he did vote, and such admissions shall not be used against him in any prosecution for illegal voting.

Voters can not be compelled to testify for whom they voted until it appears that they cast an illegal vote. *Pedigo v. Grimes*, 113 Ind. 148.

6321. (4765.) **Fees and costs.**—88. The sheriff, auditor, clerk, and justices of the peace, for services rendered by them in case of contested elections, shall receive from the party at whose instance such services are performed the fees usually allowed for similar services in other cases; which fees shall be taxed as costs against the losing party, and collected as other costs are taxed and collected.

If the proceeding is dismissed the costs should be taxed to the contestor. *English v. Dickey*, 128 Ind. 174.

6322. (4766.) **Commissioner to take testimony.**—89. The court trying the cause, at the request of the contestor and contestee, in writing, or upon the application of either party, supported by affidavit showing that a saving of expense to the parties, the convenience of the witnesses, and the ends of justice will be promoted thereby, may appoint a commissioner to take the testimony of witnesses, in writing, at any time before the final hearing, and shall provide, in the order of appointment, that each party shall give reasonable notice to the other of the time and place of such taking. Such commissioner shall have power to subpoena and compel the attendance of witnesses residing in the county; and it shall be his duty to take down, in writing, all the testimony offered by the parties, and to note all objections to the testimony; and he shall report the same to the court trying the cause within the time limited by the order appointing him.

6323. (4767.) **Contest for municipal offices.**—90. All contests for municipal offices shall be tried before the circuit court of the proper county in the manner provided by law for the contest of county and township offices. The clerk of the circuit court shall be the person with whom the notice of contest shall be filed, and he shall perform all the duties required to be performed by him and the auditor in other cases, and the contest shall be set down for trial at the next term of such circuit court.

6324. (4768.) **Appeal to supreme court.**—91. In all cases of contested elections where an appeal has been taken from the board of county commissioners to the circuit court, either party feeling aggrieved by the judgment of said court may appeal therefrom to the supreme court, as in other civil cases. The appeal-bond in such cases shall be in a penalty sufficient to secure any damage which may accrue by a stay of proceedings upon the judgment. And whenever, by reason of such appeal, a party may be excluded from the office to which he may be entitled, pending such appeal, the principal and sureties in said bond shall be liable thereon for the amount of the emoluments of the office to the party deprived thereof.

ARTICLE 6.—BRIBERY OF ELECTORS.

SEC.	SEC.
6325. Election bribery—Liability.	6328. Warrant from justice.
6326. Action.	6329. Procedure before justice.
6327. Arrest and bail.	6330. Binding over.

SEC.

6331. Discharge from jail.
 6332. Procedure.
 6333. Continuance.
 6334. Trial in absence of defendant.
 6335. Transcript—Lien.

SEC.

6336. Costs—Judgment—Stay.
 6337. Execution.
 6338. Contracts.
 6339. Laws repealed.

[Acts 1889, p. 360. In force March 9, 1889.]

6325. (E. S. 1396.) Election bribery—Liability.—1. That whoever hires or buys, directly or indirectly, or handles any money or other means, knowing the same is to be used to induce, hire or buy any person to vote or refrain from voting any ticket or for any candidate for any office at any election held pursuant to law, or at any primary election or convention of any political party, then the person so offending in any one of the foregoing particulars, and all other persons aiding, abetting, counseling, encouraging or advising such acts, shall thereby become liable jointly and severally to the person hired, bought or induced to vote or refrain from voting by the means above enumerated, in the sum of three hundred dollars and reasonable attorney's fees for collecting the same in an action to be brought as hereinafter provided on the relation of the voter in whose favor the liability is created by this section.

6326. (E. S. 1397.) Action.—2. When any liability accrues against any person in favor of another under the provisions of the foregoing section, the latter may bring an action therefor in the name of the state of Indiana on his own relation, either in the circuit or superior court or before any justice of the peace in the county where the defendant or one of the defendants resides, on a complaint in writing under oath.

6327. (E. S. 1398.) Arrest and bail.—3. When the complaint is filed in the circuit or superior court the clerk shall issue a warrant to the sheriff of any county, or several warrants to sheriffs of different counties where the defendant or different defendants may be, commanding such sheriff to arrest the defendant or defendants. The person arrested in vacation may be admitted to bail by the sheriff, by entering into a bond payable to the state of Indiana, with at least two good freehold sureties resident in the county where the action is brought, to the approval of the sheriff, in a penalty of one thousand dollars, conditioned that such defendant will appear on the first day of the next term of said court, and continually until said cause is disposed of, and abide the order of the court; and in default of such bail the sheriff shall commit him to the jail of the county where the action is pending. The judge of the circuit or superior court may discharge such defendant on a writ of *habeas corpus* if on the hearing of such writ no cause for his imprisonment appears.

6328. (E. S. 1399.) Warrant from justice.—4. When the complaint is filed before a justice of the peace he shall issue a warrant to the proper constable commanding him to arrest the defendant and bring him forthwith before him for examination.

6329. (E. S. 1400.) **Procedure before justice.**—5. Upon the arrest of the defendant by the constable, or the return of the warrant that he can not be found, such justice shall proceed to hear and determine said complaint. The rules of evidence both before the justice and in the circuit and superior courts shall be the same as in civil cases.

6330. (E. S. 1401.) **Binding over.**—6. If the justice, on hearing, adjudges that there is probable cause for the prosecution, he shall, if such defendant is in custody, require him to enter into a bond in the penal sum of one thousand dollars, with at least two good freehold sureties resident in the county, payable to the state of Indiana and conditioned that he will appear on the first day of the next term of the court wherein the prosecution is pending, to answer such complaint, and not depart without leave until the final disposition of said prosecution and abide the judgment and orders of such court, or failing therein he will pay such sums of money and to such persons as may be adjudged by such court, and shall transmit such bond, together with a certified transcript of his proceedings and the other papers in the cause, to the clerk of the circuit or superior court of the proper county. And if such defendant shall fail to give such bond, such justice shall commit him to jail until discharged by law. Such bond, or any bond given by said defendant on any continuance or arrest, may be put in suit for a breach thereof by the relator, in the name of the State of Indiana, for his benefit, and the measure of recovery on said bond shall be the amount of any judgment the relator recovered in the original prosecution, and all costs therein, or in case the original prosecution has not yet been tried, then the amount the relator can show he would have been entitled to recover and all costs therein and all costs in the suit on the bond.

6331. (E. S. 1402.) **Discharge from jail.**—7. Any person committed to jail for failure to give such bond may be discharged from custody by filing, at any time after such commitment, such bond with the clerk, and with his approval; and a certificate thereof by the clerk to the sheriff or jailor shall be sufficient to authorize him to discharge said defendant from custody.

6332. (E. S. 1403.) **Procedure.**—8. The trial and continuance of such prosecution, both before the justice and the circuit or superior court, shall in all respects herein not otherwise provided be governed by the law regulating civil suits, except that in trials before justices no jury shall be allowed.

6333. (E. S. 1404.) **Continuance.**—9. A continuance for cause may be granted to either party both in the circuit or superior courts, and before the justice, and upon the justice granting such continuance to the defendant a like bond shall be required of him as is required in the sixth section for his appearance before the justice instead of the circuit or superior court on the day to which the cause is continued or commit him to jail for failure to give such bond; and such defendant may be discharged from custody in the same manner as in the seventh section provided.

6334. (E. S. 1405.) **Trial in absence of defendant.**—10. If the defendant shall not have been arrested, or has escaped after arrest, such trial shall proceed in his absence, and if it be adjudged that there is probable cause for such prosecution the justice shall transmit the papers and a transcript of such judgment and proceedings without delay to the clerk of the circuit or superior court of the proper county, who shall file and docket the same for trial; and such cause shall be heard and determined whether the defendant appear or not, the same as if he were present. When no arrest has been made notice by publication in a newspaper may be given to the defendant as in other civil cases in the circuit or superior court.

6335. (E. S. 1406.) **Transcript—Lien.**—11. The filing of such transcript as in sections 6 and 9 provided and the filing the complaint with the clerk as in section 3 in this act provided shall operate from the time of such filing as a lien upon the real estate of such defendant in the county to the extent of the judgment which may afterward be rendered against him in such prosecution; and such judgment shall have the same effect and lien as if rendered at the time of such filing; and such lien shall be declared in such judgment.

6336. (E. S. 1407.) **Costs—Judgment—Stay.**—12. If the finding of the circuit or superior court or the jury trying the cause is for the defendant he shall recover a reasonable attorney's fee, costs against the relator, and be discharged; if the finding is for the plaintiff the state shall recover judgment against the defendant in the sum of three hundred dollars for the use and benefit of the relator, a reasonable fee for his attorney in said prosecution, and all costs; and the court shall require of such defendant, if he be in custody, to replevy such judgment by good freehold surety, the length of stay to be six months from the date of the judgment, or in default thereof shall commit such defendant to jail to remain until discharged by law.

6337. (E. S. 1408.) **Execution.**—13. Execution may issue on such judgments whenever any amount remains unpaid on the same, and shall be executed without relief from valuation and appraisal laws.

6338. (E. S. 1409.) **Contracts.**—14. Any and all contracts and agreements made for the purpose of evading the provisions of this act shall be absolutely void.

6339. (E. S. 1410.) **Laws repealed.**—15. All of sections 1, 2, 3 and 5 of an act entitled "An act to protect the ballot box, to procure fair elections, to prevent the purchase or sale of votes, to provide means of proving such offenses, prescribing the punishment therefor," and repealing sections 268 and 269 of "An act concerning public offenses and their punishment," approved April 14, 1881, being sections 2184 and 2185 of the revised statutes of 1881, approved March 18, 1885, except so much thereof as makes the mere offer to hire or buy any person to vote or refrain from voting a criminal offense; and all laws and parts of laws in conflict with the provisions of this act are hereby repealed.

ELECTORS—PRESIDENTIAL.

SEC.	SEC.
6340. When chosen.	6346. Deputy marshals—Vacancies.
6341. Notice—How and by whom given.	6347. Duties of marshal and secretary of state.
6342. Certificate to marshal.	6348. Meeting of electors—Vacancies.
6343. Return-districts.	6349. Vote of electors.
6344. Duty of governor.	6350. Pay of electors and marshals.
6345. Affidavit of marshal.	

[1 R. S. 1852, p. 516. In force May 6, 1853.]

6340. (4769.) When chosen.—1. The qualified electors of the state shall, on Tuesday following the first Monday in November, in the year 1852, and on Tuesday following the first Monday in November in every fourth year thereafter, elect electors of president and vice-president of the United States; which election shall, in all respects, be governed by the law regulating general elections.

The states have exclusive power to determine the manner of choosing electors, and they may be selected from districts, but congress has power to determine the time of the appointment of electors and when they shall meet. *McPherson v. Blacker*, 146 U. S. 1.

6341. (4770.) Notice—How and by whom given.—2. The sheriff of each county shall give notice of the time of holding such elections, together with the number of electors to be elected, by publishing such notice in some newspaper within the county, or by written or printed notices to be set up at the usual places of holding elections in the respective townships, at least twenty days preceding the time of holding such elections.

6342. (4771.) Certificate to marshal.—3. Boards of elections in the several townships or precincts shall make out certificates, under their hands, certifying, in words, the number of votes that each person received for elector; and the same shall be attested by the clerks of said election, sealed in the presence of such judges, and put into the hands of the selected judges, who shall, on the ensuing Thursday, deliver the same to the clerk of the circuit court, or, in his absence, to his deputy, or, in their absence, to the sheriff, who shall, in the presence of such judges in attendance, between the hours of twelve and six, of said day, compare the different returns, and make out, in words, a certificate of the number of votes each candidate for elector received in the county; which certificate shall be signed by the clerk, deputy or sheriff officiating, and be sealed with the seal of the circuit court of the county, and delivered by such clerk, deputy or sheriff to the marshal appointed to convey the same to the seat of government.

6343. (4772.) Return-districts.—4. Each congressional district shall compose one return-district, and shall be numbered as the districts are numbered when the votes are taken.

6344. (4773.) Duty of governor.—5. The governor shall, before the first day of October in each year in which such election is to be held, appoint some citizen in each district as marshal, who shall hold his office until the duties required of him by this act are performed.

6345. (4774.) Affidavit of marshal.—6. Each marshal, before the first Monday in November following, shall make an affidavit on the back of his appointment that he will, without fraud or delay, perform the duties required of him by this act.

6346. (4775.) Deputy marshals—Vacancies.—7. Such marshals may appoint deputies, who shall make the same affidavit on the back of their appointment as is required of marshals; and vacancies occurring in the office of marshal, by removal from the state or otherwise, shall be filled by the judge of the circuit court of the county in which such marshal resided.

6347. (4776.) Duties of marshal and secretary of state.—8. Each marshal or his deputy shall visit the county seats of the counties in his district, receive the returns thereof from the clerks, deputies or sheriffs officiating, and deliver the same, on the fourth Monday in November following, between the hours of nine and eleven of said day, to the secretary of state, who, in presence of the governor and all the marshals in attendance, between the hours of twelve and six o'clock on said day, shall compare such certificates and read aloud the number of votes each person has received, and make out an abstract of the persons voted for, and the number, in words, of votes given to each; and the governor shall forthwith make out and transmit, by mail, to the persons having the highest number of votes, certificates of their election. But if more than the number of persons to be elected have the greatest and an equal number of votes, then the election of those having an equal number of votes shall be determined by lot, drawn by the secretary of state in the presence of the governor and marshals.

6348. (4777.) Meeting of electors—Vacancies.—9. Such electors shall assemble in the chamber of the house of representatives, on the first Monday in December, or such other day as may be fixed by congress to elect such president and vice-president, at the hour of ten o'clock A. M., and the governor shall then and there deliver to the electors present a certificate of the names of all the electors; and if any elector fail to appear before eleven in the morning of said day, the electors present shall, by ballot, by a majority of all present, fill such vacancy; which election shall be forthwith certified by a majority of the electors to the governor, who shall immediately notify such person of his election.

By act of congress of February 3, 1887, Vol. 24, U. S. Stat.-at-Large, p. 373, and Supp. of U. S. Stat., Vol. 1, 1874-1891, p. 527, it is provided as follows: That the electors of each state shall meet and give their votes on the second Monday in January next following their appointment, at such place in each state as the legislature of each state shall direct.

Such statute also provides for certifying the result of the voting and prescribes the duties of all persons connected therewith.

6349. (4778.) Vote of electors.—10. Such electors when so assembled, and such vacancies are so filled, shall then and there proceed to vote, by ballot, for president and vice-president of the United States, and perform the duties required by the constitution and laws of the United States.

6350. (4779.) Pay of electors and marshals.—11. The compensation of such electors and marshals shall be audited by the auditor of state, and paid by the state treasurer out of any moneys not otherwise appropriated, as follows, to wit: Such electors as attend shall receive the same per diem and mileage as members of the general assembly; each marshal shall be allowed ten cents for every mile he shall travel in collecting said returns, and in going to and from the seat of government, to be computed by the nearest and most usual route from county seat to county seat, and to the seat of government to and from the county seat of the county in which he resides.



ELECTION LAW INDEX.

(REFERENCES ARE TO SECTIONS.)

	SECTION.
ADJOURNMENTS—	
Of elections forbidden.....	6265
Forbidden in recounting	6298
AFFIDAVITS—	
For party challenged	2331, 6237
Crime in making false	6232, 6239
Election sheriffs arresting on.....	6212
Challenger may make	6237
Forms for those in challenges.....	6237
Arrest of illegal voter on.....	6238
Made on election day to be preserved.....	6259
Of marshal.....	6345
ALTERING RETURNS—	
A crime	2335
APPEALS—	
To Circuit Court in election contests	6318
To Supreme Court in election contests	6324
ARREST—	
When electors free from.....	93, 6196
By election sheriffs.....	6212
Of person guilty of bribery.....	6327
Of illegal voter.....	6238
ASSESSORS—	
Time for electing.....	6290
AUDITOR OF COUNTY—	
See County Auditor.	
AUDITOR OF STATE—	
Warrant to pay for state ballots.....	6225
BAIL—	
For person charged with bribery.....	6327
BALLOT—	
Elections shall be by	94
Destroying, a crime.....	2334, 2343
Crime to open or mark ballot packages	2338
Officers not to disclose contents of	6204
State board distributing.....	6213
County board of election commissioners distributing	6214
Names of candidates on	6215
Petition to get names on	6215

(REFERENCES ARE TO SECTIONS.)

SECTION.

Device to be used on	6215
Name on but once.....	6216
Order of printing names of candidates	6219
Omitting declining candidates therefrom.....	6220
Form of	6222
Color of	6222
Order of placing tickets on	6222
When pasters may be used.....	6223
Replacing destroyed or lost.....	6225
Packages to be sealed	6225
Number to be provided	6225
County clerk distributing	6225
Crime for board to allow them to be taken.....	6227
Crime to remove	6228
Delivering packages to inspector	6229
To be in sealed packages	6229
Initials of poll clerks on.....	6230
Inspector opening packages of.....	6230
Effect of loss of	6234
When election board may print	6234
Preserving and destroying those left over	6235
Poll clerks delivering to voters	6241
How voters should prepare	6241
How to stamp.....	6241
Must not have distinguishing marks	6241
How to fold	6241
Elector delivering to inspector.....	6241
Depositing in ballot boxes.....	6241
Effect where elector exposes.....	6241
Noting exposed on poll-list	6241
When paster ballots may be used	6242
Mutilation by mistake	6243
When poll clerks may prepare	6244
Crime to remove from election room.....	6246
Counting and destroying.....	6247
Order of canvassing.....	6248
What ones should not be counted	6248
Disputed and protested to be preserved.....	6248
Destruction after canvass over.....	6248
Inducing elector to put distinguishing mark on is a crime.....	6252
Elector must not show	6256
Who may receive from elector.....	6256
How to prepare for vote on constitutional amendment	6258
For city and town elections	6261
Inspector has care of after canvass	6268
For township elections	6291
How preserved after recounting	6298

BALLOT BOXES—

A crime to break open	2333
Removing ballot from a crime	2334
Seizing a crime.....	2342

(REFERENCES ARE TO SECTIONS.)

	SECTION.
A crime to destroy	2343
County commissioners furnishing	6207
Two locks on	6207
Inspection of	6208
Who keeps keys of	6208
Depositing ballots in	6241
Depositing with township trustee ..	6269
For township elections	6291
BALLOT PACKAGES—	
Noting condition of seals on	6248
Crime to open or destroy	6250
BETTING ON ELECTIONS—	
Penalty for	6197
Disqualifies for service on election board ..	6200
BOARDS—	
See Board of Canvassers; County Commissioners; County Board of Election Commissioners; State Board of Election Commissioners; Election Board.	
BOARD OF CANVASSERS—	
Who are members of	6270
When shall meet	6270
Officers of	6271
Duties of	6272
Certificate of result of election	6273
Duty, where papers defective	6275
BOARD OF ELECTION—	
See Election Board.	
BOND—	
To secure recount	6295
In bribery cases	6330
BOOTHS—	
Construction of	6236
How long electors may remain in	6243
Number allowed in	6243
Crime to tear down or remove	6255
Voters to occupy	6241
BOUNDARIES OF PRECINCT—	
Change of	6199
BRIBERY—	
For nomination, a crime	2327
At primary election	2327
Penalty for bribing elector	2328
As ground for challenge	2331
To procure election	2348
Civil liability for	6325, 6326
Arrest and bail	6327
Warrant for from Justice of the Peace	6328
Proceeding before Justice of the Peace in ..	6329, 6330
Binding over party charged	6330

(REFERENCES ARE TO SECTIONS.)

SECTION.

Discharge from jail.....	6331
Procedure in.....	6332
Continuance.....	6333
Trial in absence of defendant.....	6334
Filing transcript in.....	6335
Judgment in lien on real estate.....	6335
Costs, judgment and stay in.....	6336
Execution on judgment in.....	6337
Effect on contracts.....	6338
Laws repealed.....	6339
CANDIDATES—	
Not to be related to members of election board.....	6200
Names on ballots.....	6215
How names of shall be printed.....	6216
Order of printing names.....	6219
Effect of declination of.....	6220
Nomination to fill vacancy.....	6223
Death, removal or resignation of.....	6223
When may have recounting.....	6294
Right to be present at recounting.....	6296
CANVASSING VOTES—	
Duty of board in reference to.....	6248
Persons allowed in room during.....	6248
Order of.....	6248
In township election.....	6292
CERTIFICATE—	
Board of canvassers preparing.....	6273
CERTIFICATE OF CLERK—	
Of officers to be elected.....	6190
CERTIFICATE OF ELECTION—	
When county clerk shall make out.....	6276
Of Legislators.....	6279
Sending to Secretary of State.....	6281
In township elections.....	6293
By Circuit Court after trial of contest.....	6319
CERTIFICATE OF JUDGES—	
Duty in reference to.....	6267
CERTIFICATES OF NOMINATION—	
How and when filed.....	6218
To be preserved.....	6217
Crime to file false.....	6249
Crime to deface.....	6249
CERTIFICATE OF RECOUNT—	
How shall be made out.....	6297
CHALLENGE—	
Bribery as ground for.....	2331
What voter shall do when made.....	6257
Affidavits on.....	6237

(REFERENCES ARE TO SECTIONS.)

SECTION.

CHALLENGE WINDOW—	
Who may stand near.....	6237
CHALLENGER—	
Standing at chute.....	6212
Compensation of.....	6212
Elector announcing name to	6236
Where may stand.....	6237
May make affidavit.....	6237
CHUTE—	
County commissioners providing	6236
Order in which voters shall enter.....	6237
Poll book holder standing at.....	6212
CIRCUIT COURT—	
Appeals to in election contests	6318
Duty in appeals in election contests.....	6319
CITIES—	
When polls shall open in.....	6209
CITY BOARD OF ELECTION—	
Duty of.....	6261
CITY CLERK—	
Duty in city elections	6261
CITY ELECTIONS—	
Duty of city clerk.....	6261
When and how held	6261
CLERK—	
See County Clerk; Poll Clerks.	
COMMISSIONERS—	
Appointing to take testimony in election contest	6322
COMMISSIONS—	
How right to affected by defective returns	6277
COMPENSATION—	
Of election sheriffs	6212
Of challenger	6212
Of poll book holder.....	6212
Of state board of election commissioners	6213
Of county board of election commissioners.....	6214
Of county clerk for procuring state ballots	6226
When inspector not entitled to	6232
Of special messenger.....	6232
Of election officers.....	6285
Of recounting commissioners	6298
Of presidential electors and marshals.....	6350
CONGRESS—	
Power over elections	4, 45
Power to provide penalties	4
CONGRESSMEN—	
Secretary of State canvassing vote for.....	6283

(REFERENCES ARE TO SECTIONS.)

SECTION.

CONSTABLES—

Time for electing 6290

CONSTITUTIONAL AMENDMENT—

Secretary of State certifying proposed to county clerk 6221

How to vote on 6241, 6253

CONSTITUTIONAL PROVISIONS—

As to elections 4, 44, 45, 83, 84

As to qualifications of electors 84

CONTESTS OF ELECTION—

For State offices 6299-6313

Who may contest 6299

Notice of 6301

Committee to try 6302

Power of committee appointed to try 6302

Contesting seat of legislator 6303

Depositions in 6304

Notice to contestee 6305

Powers of Justices of the Peace 6306

Meeting and duty of Justices of the Peace 6308

Duty of county clerk 6309

Duty of Secretary of State 6310

Depositions, may be used 6311

For local offices 6314-6324

Causes for 6312

When election not set aside 6313

Notice by auditor to clerk 6315

Notice to county board and contestee 6316

Subpœnas to be issued by auditor 6317

Trial of 6317

Appeal to Circuit Court 6318

Duty of Circuit Court on appeal 6319

Voters compelled to testify 6320

Fees and costs in 6321

Appointing commissioner to take testimony in 6322

Contest for municipal offices 6323

Appeal to Supreme Court in 6324

CONTINUANCE—

May be granted in bribery cases 6333

CORPORATIONS—

Allowing employes time to vote 6240

COSTS—

In election contests 6321

In bribery cases 6336

COUNTER AFFIDAVIT—

Where challenge is made 6237

COUNTY—

How long elector to reside in 84, 6192

(REFERENCES ARE TO SECTIONS.)

SECTION.

COUNTY AUDITOR—

Furnishing forms.....	6203
Notice by of opening of polls.....	6209
Filing statement of contest with.....	6314
Notifying county clerk of election contest.....	6315
Issuing subpoenas in election contest.....	6317
Fees in election contests.....	6321

COUNTY BOARD OF ELECTION COMMISSIONERS—

Who constitutes.....	6214
Distributing ballots.....	6214
No compensation.....	6214
Duties of.....	6215
Selecting device for ballot.....	6222
Color of ballot prepared by them.....	6222
Crime to allow ballots to be taken.....	6227
Duty as to instructing voters.....	6231
Employing special messenger.....	6232

COUNTY CENTRAL COMMITTEE—

Naming judges.....	6200
Naming poll clerks.....	6202
Nominations by chairman of.....	6214

COUNTY CLERK—

Certificate of as to election.....	6190
Publication by.....	6191
Duty of.....	6191
Appointing election commissioners.....	6214
Preserving petitions and certificates of nomination.....	6217
Governor certifying nominations to.....	6219
Duty to procure state ballots.....	6225
Duty to distribute ballots.....	6225
Compensation for procuring state ballots.....	6226
Delivering ballots to inspector.....	6229
Crime to open or destroy ballot packages.....	6250
Inspector delivering affidavits to.....	6259
Delivering returns to.....	6268
Duty to keep ballots after return made.....	6269
As clerk of board of canvassers.....	6271
Preserving records of board of canvassers.....	6272
Certifying tie vote.....	6274
When shall make out certificates of election.....	6276
Certificate to Secretary of State.....	6281
Duty as to election of Governor.....	6284
Duty as to recounting.....	6296
Giving notice of election contests.....	6305
Duty in election contests.....	6309
Auditor notifying of election contest.....	6315
Fees in election contests.....	6321

COUNTY COMMISSIONERS—

Right of elector to mandate.....	6198
Fixing precincts.....	6198

	SECTION.
When appoint inspectors.....	6201
Furnishing ballot boxes.....	6207
Compensating election sheriffs.....	6212
Providing chute.....	6236
Providing room for holding election.....	6236
Notice to of election contest.....	6316
Powers of in election contests.....	6317
Trial of election contest.....	6317
COUNTY ELECTIONS—	
General election law applicable to.....	6260
COUNTY OFFICES—	
How contest of election for made.....	6314
COUNTY SEAT—	
Election to re-locate.....	2344, 2347
COUNTY SHERIFF—	
See Sheriff; Election Sheriffs.	
CONVENTIONS—	
Preparing certificates of nomination.....	6215
CRIMES—	
Selling liquor on election day.....	2194
Druggist selling liquor on election day.....	2195
Voting in wrong precinct.....	2323
Illegal voter offering to vote.....	2322
Non-resident voting.....	2324
Importing voters.....	2325
Voting more than once.....	2326
Bribery for nomination.....	2327
Bribery of elector.....	2328
Seeking to influence voters.....	2329
Influencing elector to refrain from voting.....	2330
False affidavit.....	2332
Breaking ballot box.....	2333
Breaking locks on ballot box.....	2333
Breaking seals on ballot box.....	2333
Altering returns.....	2333, 2335
Fraud by election officer.....	2334
Refusing to receive vote.....	2336
Officer persuading voter.....	2337
Officer opening or marking ticket.....	2338
Deceiving illiterate voter.....	2339
Defrauding voter.....	2340
Using violence, threats or restraint.....	2341
Seizing ballot box.....	2342
Destroying ballot box or ballots.....	2343
Inducing voter to re-sign petition.....	2344
Selling signature to petition.....	2345
Fraud at special election.....	2346
Buying vote at special election.....	2347
Bribing to procure election.....	2348

(REFERENCES ARE TO SECTIONS.)

SECTION.

Printer giving away ballots	6224
Permitting ballots to be taken	6227
Inspector failing to appear	6233
Making false affidavits	6239
Refusing employes time to vote	6240
Employer intimidating employe	2341
Destroying poll-book	2343
For poll clerks to deceive elector	6244
Putting marks on ballot	6245
Removing ballot from election room	6246
Defacing or destroying certificate or petition of nomination	6249
Filing false certificate or petition of nomination	6249
To print imitation ballot	6249
Opening or destroying ballot packages	6250
Attempting to enter election room	6251
Remaining too close to polls	6251
Inducing elector to place distinguishing mark on ballot	6252
Revealing how elector voted	6253
Inducing members of board to violate act	6254
Removing or destroying election conveniences	6255
Violation of duty by officer	6257
DEATH—	
Of candidate	6223
DECLINATION OF NOMINEE—	
Effect of	6229
DEFECTIVE RETURNS—	
Effect of	6277
DEPOSITIONS—	
In contests of election	6304
Reading in election contests	6311
DEPUTY MARSHALS—	
Marshals may appoint	6346
DESTROYED BALLOTS—	
Provision for replacing	6225
DISCLOSING VOTE—	
Crime for election officer to disclose vote	6256
DISFRANCHISEMENT—	
For infamous crime	89
Imprisonment constituting	6193
For importing voters	2325
DISPUTED BALLOTS—	
Inspector to preserve	6248
DISTINGUISHING MARKS—	
Ballot must not have	6241
On paster ballots	6242
Ballot having is void	6245
Ballots having not to be counted	6248
Crime to induce elector to put on ballot	6252

(REFERENCES ARE TO SECTIONS.)

SECTION.

DRUGGIST—

Selling liquor on election day.....	2195
-------------------------------------	------

ELECTION BOARD—

Eligibility to	6200
Who constitutes	6200, 6201
Filling vacancies in	6201
Electors electing.....	6201
Appointing poll clerks	9202
Inspector is chairman of	6206
When may print ballots.....	6234
Preserving and destroying ballots left over.....	6235
When may call interpreter.....	6241
Destroying ballots after canvass over.....	6248
Member protesting ballots.....	6248
Duty as to canvassing votes.....	6248
Must preserve affidavits	6259
Inducing it to violate law.....	6254
Duty of.....	6264
Meals to be furnished.....	6266
Effect of misconduct.....	6313
Certificate of vote of presidential electors.....	6342

ELECTION CONVENIENCES—

Crime to remove or destroy.....	6255
---------------------------------	------

ELECTION DAY—

Selling liquor on	2194
Druggist selling liquor on.....	2195
Work limited and prohibited on	6240
Is legal holiday.....	6262

ELECTION JUDGE—

Refusing to receive vote.....	2336
Inspector removing.....	6200
Chairman county central committee naming.....	6200
Qualifications of	6200
Inspectors appointing.....	6200, 6201
Duty to take oath.....	6204
Administering oath to inspectors	6205
Inspecting ballot boxes	6208
Effect of misconduct of.....	6313
Crime to refuse to receive vote.....	2336
Receiving and depositing ballots.....	6241
Duty as to marked ballots.....	6245
Viewing ballots on canvass of votes	6248
When can not vote.....	6264
Certificate of.....	6267
As members of board of canvassers	6271
Compensation of.....	6285

ELECTION OFFICER—

When crime to open or mark ticket.....	2333
Fraud by.....	2334

(REFERENCES ARE TO SECTIONS.)

SECTION.

Crime to persuade voter.....	2337
Compensation of	6285
ELECTION ROOM—	
Liquors must not be sold in	6236
Arrangement of	6236
Location of booths	6236
County commissioners providing	6236
Admitting elector to	6241
How voter shall leave	6241
Number of voters to be allowed in.....	6241
Persons to be allowed in	6243
Crime to remove ballot from	6246
Persons allowed in during canvass of vote.....	6248
Crime in attempting to enter	6251
ELECTION SHERIFFS—	
Compensation of.....	6212
Making arrests.....	6212
Duties of	6212
Appointment of	6212
Arresting illegal voter.....	6238
ELECTIONEERING—	
Officers of election not allowed to.....	6256
ELECTORS—	
See Voters; Presidential Electors.	
EMBLEM—	
To be used on p ballots.....	6215
EMPLOYEE—	
Employer intimidating.....	2341
Must be allowed time to vote	6240
ENGLISH—	
Voter unable to read.....	6244
EXECUTION—	
On judgment in bribery case	6337
EXPOSED BALLOTS—	
Noting on poll list.....	6241
FALSE AFFIDAVIT—	
Crime in making	2332, 6239
FEES—	
In election contests.....	6321
See Compensation.	
FELONY—	
Working disfranchisement.....	6193
For printer to give away ballots	6224
Board allowing ballots to be taken.....	6227
To remove ballots.....	6228
Poll clerk falsely marking ballot.....	6244

(REFERENCES ARE TO SECTIONS.)

SECTION.

FORFEITURE—	
For betting on election	6197
FORMS—	
Auditor furnishing to inspectors	6203
For affidavit on challenge.....	6237
For paster ballots.....	6242
FRAUD—	
By election officer.....	2334
At special election.....	2346
FREEHOLDER—	
When judge shall be	6200
When inspector must be	6201
GOVERNOR—	
Appointing state board of election commissioners	6213
Filing certificates and petition of nominations with.....	6215
Perserving petitions and certificates of nomination.....	6217
Certifying nominations to county clerk.....	6219
Declining candidates not to be certified.....	6220
Duty to appoint marshal.....	6344
Duty of county clerk as to election of	6284
Ordering special elections	6287
GRAND JURY—	
Examining election affidavits.....	6259
HOUSE OF REPRESENTATIVES—	
Speaker receiving vote for Governor	6284
HOUSEHOLDER—	
When inspector must be	6201
ILLEGAL VOTER—	
Crime by voting	2322
Crime by offering to vote.....	2322
Arrest of.....	6238
ILLEGAL VOTES—	
Contesting election on account of	6312
ILLITERATE VOTER—	
Crime to deceive.....	2339
IMITATION BALLOT—	
Crime to print	6249
IMPORTING VOTERS—	
A crime.....	2325
INCORPORATED TOWNS—	
When polls shall open in	6209
INFAMOUS CRIME—	
Disfranchisement for	89
INITIALS—	
Of poll clerks on ballots	6230
Must show after ballot folded.....	6241

(REFERENCES ARE TO SECTIONS.)

SECTION.

INK PADS—

State board furnishing.....6225

INSPECTOR—

Crime to refuse to receive vote.....2336

Township trustee as.....6200

Appointing judges.....6200

Removing judges.....6200, 6201

Filling vacancies in election board.....6201

Qualifications of.....6201

When board of commissioners appoint.....6201

Receiving forms, papers, etc.....6203

Duty to take oath.....6204

Administering oaths to judges.....6205

Duties of.....6206

Chairman of board.....6206

Administering oath to clerks.....6206

Inspecting ballot boxes.....6208

Opening and closing polls.....6209

Authorizing person to receive ballots.....6229

Delivery of ballots to.....6229

Opening ballot packages.....6230

Preserving seals on ballot packages.....6230

Posting instruction cards.....6231

Failing to call for ballots.....6232

When not entitled to compensation.....6232

Crime to fail to appear.....6233

Reporting loss of ballots.....6234

Elector delivering ballot to.....6241

Receiving and depositing ballots.....6241

Duty as to marked ballots.....6245

Viewing ballots on canvass of vote.....6248

Preserving disputed ballots.....6243

Crime to open or destroy ballot packages.....6250

Returning affidavits to county clerk.....6259

When can not vote.....6264

Care of ballots and papers after canvass.....6268

Oath to election return.....6268

Depositing ballot boxes with township trustee.....6269

Constituting member of board of canvassers.....6271

Compensation of.....6285

Duty in township elections.....6292

INSTRUCTION CARDS—

Inspector posting.....6231

Who prepares.....6231

Language and form of.....6231

Crime to tear down.....6255

INSTRUCTION OF VOTERS—

By poll clerks.....6241

See Instruction Cards.

INTERPRETER—

When board of election may call.....6241

(REFERENCES ARE TO SECTIONS.)

SECTION.

INTOXICATING LIQUORS—	
Crime to sell on election day.....	2194
Druggist selling on election day	2195
Election not to be held in room where they are sold.....	6236
Not to be furnished to election board.....	6266
JAIL—	
Discharging defendant from in bribery cases	6331
JUDGES—	
See Election Judges	
JUDGMENT—	
In bribery cases.....	6336
JUSTICES OF THE PEACE—	
Duty in election contests.....	6304, 6306, 6308
Taking illegal voter before on arrest.....	6238
Time for electing	6290
Fees in election contests.....	6321
Warrant for persons guilty of bribery	6328
Proceedings before in bribery cases.....	6329, 6330
KINSHIP—	
Disqualifying election officer.....	6200
LEGAL HOLIDAY—	
Election day is.....	6262
LEGISLATORS—	
Certificate of votes for.....	6278
Certificates of election of.....	6279
Effect of tie vote for.....	6280
How to contest seat of.....	6303
LEGISLATURE—	
Providing for election of senators and representatives	4
LIEN—	
On real estate in bribery cases.....	6335
LIQUOR—	
See Intoxicating Liquors.	
LOCAL OFFICES—	
Contest for	6314, 6324
LOCKS—	
Crime to break those on ballot box	2333
On ballot boxes	6207
LOSS OF BALLOTS—	
Report of	6234
Board giving new supply.....	6234
Provision for replacing	6225
MANNER OF VOTING—	
Duty of poll clerks to explain	6241
MARINE—	
No right to vote	85, 6194

(REFERENCES ARE TO SECTIONS.)

SECTION.

MARSHAL—	
Duty in Presidential elections	6342, 6347
When Governor shall appoint.....	6344
Affidavit of	6345
Appointing deputies	6346
Pay of.....	6350
MEALS—	
Who pays for	6266
Furnishing to election board	6266
MESSENGER—	
See Special Messenger.	
MISDEMEANOR—	
Working disfranchisement.....	6193
MUNICIPAL OFFICES—	
Contest for.....	6323
MUTILATED BALLOTS—	
Poll clerks destroy.....	6243
Not to be counted.....	6248
NATURALIZATION—	
As affecting right to vote	84
NOMINATION—	
Bribery for a crime	2327
Certificates of.....	6215
Chairman of political organization making	6223
NON-RESIDENT—	
Crime by voting.....	2325
NOTICE—	
Sheriff giving of election	6191
Of change of boundaries of precinct	6199
Sheriff giving of special election.....	6288
Of contest of election.....	6301
By auditor to clerk of election contest.....	6315
To contestee of election contest.....	6316
Of election of presidential electors.....	6341
OATH—	
Officers to take.....	6204
Who administers to election officers.....	6205
Power of inspector to administer	6206
Of inspector on return of vote.....	6268
OFFICERS—	
Oath of.....	6204
Not allowed to electioneer.....	6256
OFFICES—	
To be filled at general election.....	6190
PAPERS—	
Inspector has custody of after the canvass	6268

(REFERENCES ARE TO SECTIONS.)

SECTION.

PASTER BALLOTS—

Style for printing	6242
Forms for	6242
When may be used	6242

PASTERS—

When may be used	6223
------------------------	------

PENAL OFFENSES—

See Crimes.

PENALTIES—

Power of Congress to provide	4
For bribery for nomination	2327
For bribing elector	2328
See Crimes.	

PERJURY—

In making false affidavits	6239
----------------------------------	------

PETITIONS—

To get names on ballot	6215
------------------------------	------

PETITIONS OF NOMINATION—

Requisites of	6216
To be preserved	6217
How and when filed	6218
Crime to deface or mutilate	6249
Crime to file false	6249

PHYSICAL DISABILITY—

How affects voter's rights	6244
----------------------------------	------

POLLS—

When to open and close	6209
Opening and closing in cities and towns	6209
Keeping people away from	6212
Posting sample ballots at	6231
Posting instruction cards at	6231
Who may stand near	6237
Crime to remain too close to	6251

POLL BOOK—

A crime to alter	2333
Crime to destroy	2343

POLL BOOK HOLDER—

Compensation of	6212
Standing at chute	6212
Where may stand	6237

POLL CLERKS—

County central committee naming	6202
Election board appointing	6202
Inspector administering oath to	6206
Duty to put pasters on tickets	6223
Duties of	6230
Inspector delivering ballots to	6230

(REFERENCES ARE TO SECTIONS.)

SECTION.

Writing initials on ballots.....	6230
Voter announcing name to.....	6241
Delivering ballots to voter.....	6241
Delivering stamps to voter.....	6241
Explaining manner of voting.....	6241
Custody of stamps.....	6241
Destroying mutilated ballots.....	6243
When may prepare ballots.....	6244
Crime to deceive elector.....	6244
Making memoranda of condition of seals.....	6248
Electors must receive ballots from.....	6256
When can not vote.....	6264
Compensation of.....	6285
POLL LIST—	
List of exposed ballots.....	6241
Noting mutilated and destroyed ballots on.....	6243
Canvassing.....	6270
POLLING PLACE—	
See Polls.	
POSTING—	
Notice of election by.....	6291
PRECINCT—	
How long elector to reside in.....	64
Voting in wrong.....	2323
In which elector should vote.....	6210
Elector's residence in.....	6192
Number of voters to.....	6198, 6199
How formed.....	6198
Notice of change of boundaries.....	6199
PRESIDENTIAL ELECTORS—	
How chosen.....	6340
How and by whom notice of election given.....	6341
Certificate of election to marshal.....	6342
Duty of marshal in reference to election of.....	6342, 6347
Return districts.....	6343
Governor appointing marshal.....	6344
Appointment and affidavit of marshal.....	6344, 6345
Duties of Secretary of State.....	6347
Meeting of.....	6348
Filling vacancies.....	6348
Vote of.....	6349
Pay of.....	6350
PRIMARY ELECTION—	
Bribery at.....	2327
PRINTER—	
Crime to give away ballots.....	6224
PROTESTED BALLOTS—	
To be preserved.....	6248

(REFERENCES ARE TO SECTIONS.)

SECTION.

PUBLICATION—

Notice of change of boundaries by	6199
Notice by of election of presidential electors.....	6341

PURITY OF ELECTIONS—

See Crimes.

QUALIFICATIONS OF ELECTORS—

What required	84, 6191
---------------------	----------

RAILROAD—

Election for appropriation to aid	2346, 2347
---	------------

RECOUNTING—

When candidates may have	6294
Proceedings to obtain	6295
Order for	6296
How conducted	6296
Certificate of	6297
Adjournments forbidden.....	6298

REGISTRATION—

Power to provide for.....	95
---------------------------	----

REPEAL—

Of former election laws.....	6263
------------------------------	------

RESIDENCE—

As affecting right to vote	84
Of soldier, seaman or marine.....	85, 6194
How affected by absence of person from country	86, 6195
As qualification of elector.....	6192

RESIDENT HOUSEHOLDER—

When judge shall be	6200
---------------------------	------

RESTRAINT—

A crime to use	2341
----------------------	------

RETURNS—

Crime to alter	2333, 2335
Duty of inspector in reference to.....	6263

RETURN DISTRICTS—

In election for presidential electors.....	6343
--	------

RIGHTS OF VOTERS—

Power of Congress over.....	44
-----------------------------	----

ROAD SUPERVISORS—

Time for electing.....	6290
------------------------	------

SAMPLE BALLOTS—

Posting at polling place	6231
Size and form	6231

SEALS—

Crime to break on ballot box.....	2333
On ballot packages.....	6225
Preserving those on ballot packages	6230
Noting condition of those on ballot packages.....	6248

(REFERENCES ARE TO SECTIONS.)

SECTION.

SEAMAN—

No right to vote	85, 6194
------------------------	----------

SECRETARY OF STATE—

Certifying proposed constitutional amendment.....	6221
County clerk sending election certificate to.....	6277
Sending certificates of election to	6280
Duty of.....	6282
Duty in election contests.....	6310
Duties in reference to presidential electors.....	6347

SHERIFF—

Duty of, in regard to elections.....	6191
Posting notice of election	6191
Appointing election sheriffs.....	6212
Receiving certificates of votes for legislators.....	6278
Receiving writs for special elections.....	6287
Giving notice of special election	6288
Serving subpoenas in election contest.....	6317
Fees in election contests	6321
Giving notice of election of presidential electors.....	6341
See Election Sheriffs.	

SOLDIER—

No right to vote	85, 6194
------------------------	----------

SPECIAL ELECTION—

Fraud at.....	2346
Crime to buy vote at	2347
When to be held	6286
Where there is tie vote.....	6286
When Governor to order	6286
Sheriff giving notice of.....	6288
How conducted	6289

SPECIAL MESSENGER—

Compensation of.....	6227
County board of election commissioners employing	6232
Reporting loss of ballots.....	6234
Crime to open or destroy ballot packages.....	6250

STAMPS—

State board distributing.....	6223
State board of election commissioners furnishing	6225
Crime to remove.....	6228
Elector returning to poll clerk.....	6241
Poll clerks delivering to voters	6241
Crime to remove from election room	6246

STATE—

How long elector to reside in.....	84
Residence in	6192
Elector absent on business of	6195

STATE BALLOTS—

To be first canvassed.....	6248
----------------------------	------

(REFERENCE: ARE TO SECTIONS.)

SECTION.

STATE BOARD OF ELECTION COMMISSIONERS—

Governor appointing.....	6213
Nomination of.....	6213
Distributing ballots, etc.....	6213
Serve for no compensation.....	6213
Duties of.....	6215
Color of their ballot.....	6222
Certifying expenses of state ballots to Auditor of State.....	6225
Furnishing stamps.....	6225
Delivering ballots to county clerks.....	6225
Employing special messenger.....	6225
Crime to allow ballots to be taken.....	6227

STATE CENTRAL COMMITTEE—

Chairman nominating election board.....	6213
---	------

STATE OFFICE—

Contest for, how made.....	6299-6313
----------------------------	-----------

STATE OFFICERS—

Certifying vote for to Secretary of State.....	6281
--	------

STAY—

In bribery cases.....	6336
-----------------------	------

SUBPENAS—

Auditor issuing in election contest.....	6317
--	------

SUPREME COURT—

Appeal to in election contests.....	6324
-------------------------------------	------

TALLY SHEET—

A crime to alter.....	2333
Noting destroyed ballots on.....	6247
Noting disputed and protested ballots.....	6248
Recording condition of seals in.....	6248
Canvassing.....	6270

THREATS—

A crime to use.....	2341
---------------------	------

TICKETS—

See Ballots.

TIE VOTE—

Duty of board of canvassers when there is.....	6274
For legislators.....	6280
Special election where there is.....	6286
In township elections.....	6292

TIME—

For holding elections.....	95, 6190
For opening and closing election.....	6209

TOWN BOARD OF ELECTION—

Duty of.....	6261
--------------	------

TOWN CLERK—

Duty in town election.....	6261
----------------------------	------

(REFERENCES ARE TO SECTIONS.)

SECTION.

TOWN ELECTIONS—	
When and how held.....	6261
Duty of town clerk.....	6261
TOWNSHIP—	
How long elector to reside in.....	84
Elector to reside in.....	6192
Dividing into precincts.....	6198
TOWNSHIP ELECTION—	
Law applicable to.....	6260
When held.....	6290
Ballots and ballot boxes for.....	6291
Canvassing the vote.....	6292
Duty of inspector.....	6292
Tie vote.....	6292
Certificate of election.....	6293
TOWNSHIP OFFICES—	
How contest of election for made.....	6314
TOWNSHIP TRUSTEE—	
As election inspector.....	6200
Furnishing meals to election board.....	6266
Inspector depositing ballot boxes with.....	6269
Time for electing.....	6290
Sheriff notifying of election.....	6191
TRANSCRIPT—	
Filing in bribery cases.....	6335
UNITED STATES—	
Absence on business of.....	6195
UNITED STATES REPRESENTATIVES—	
Election of.....	4
UNITED STATES SENATORS—	
Election of.....	4
VACANCIES—	
Filling in board of election.....	6201
Nomination to fill.....	6223
Special elections to fill.....	6286
In presidential electors, filling.....	6348
VIOLENCE—	
A crime to use.....	2341
VOTE—	
Refusing to receive.....	2336
Crime to buy at special election.....	2347
Method of canvassing.....	6248
VOTERS—	
Rights of.....	44
Qualifications of.....	84, 6192
When free from arrest.....	94, 6196
Importing a crime.....	2325

(REFERENCES ARE TO SECTIONS.)

SECTION.

Crime in seeking to influence.....	2329
Affidavit for challenged.....	2331
Illegal offering to vote.....	2322
Penalty for bribery of.....	2328
Influencing to refrain from voting.....	2330
Crime for officer to persuade.....	2337
Crime to deceive illiterate.....	2339
Crime in defrauding.....	2340
Crime to sell vote.....	2347
Soldiers, seamen and marines.....	6194
Number to precinct.....	6198, 6199
When fill vacancy in election board.....	6201
Electing board of election.....	6201
Where to vote.....	6210
Instructions to.....	6231
Showing loss of ballots.....	6234
Announcing name to challengers.....	6236
Affidavit when challenged.....	6237
Duty on entering election room.....	6241
Number to be allowed in election room.....	6241
Must fold ballot.....	6241
Returning stamp to poll clerk.....	6241
Handing ballot to inspector.....	6241
When may use paster ballots.....	6242
Crime to induce to put distinguishing mark on ballot.....	6252
Crime to reveal how he voted.....	6253
Must not disclose ballot.....	6256
Right to contest election.....	6299
Order in which to enter chute.....	6237
What to do when challenged.....	6237
Announcing name to poll clerks.....	6241
Poll clerks delivering ballots to.....	6241
Use of stamps by.....	6241
Preparing ballots in booths.....	6241
Exposing ballot.....	6241
How shall leave election room.....	7241
Unable to read English.....	6244
Crime for poll clerks to deceive.....	6244
Compelled to testify in election contests.....	6320
See Presidential Electors	

VOTING PLACE—

One in each precinct.....	6198
See Polls.	

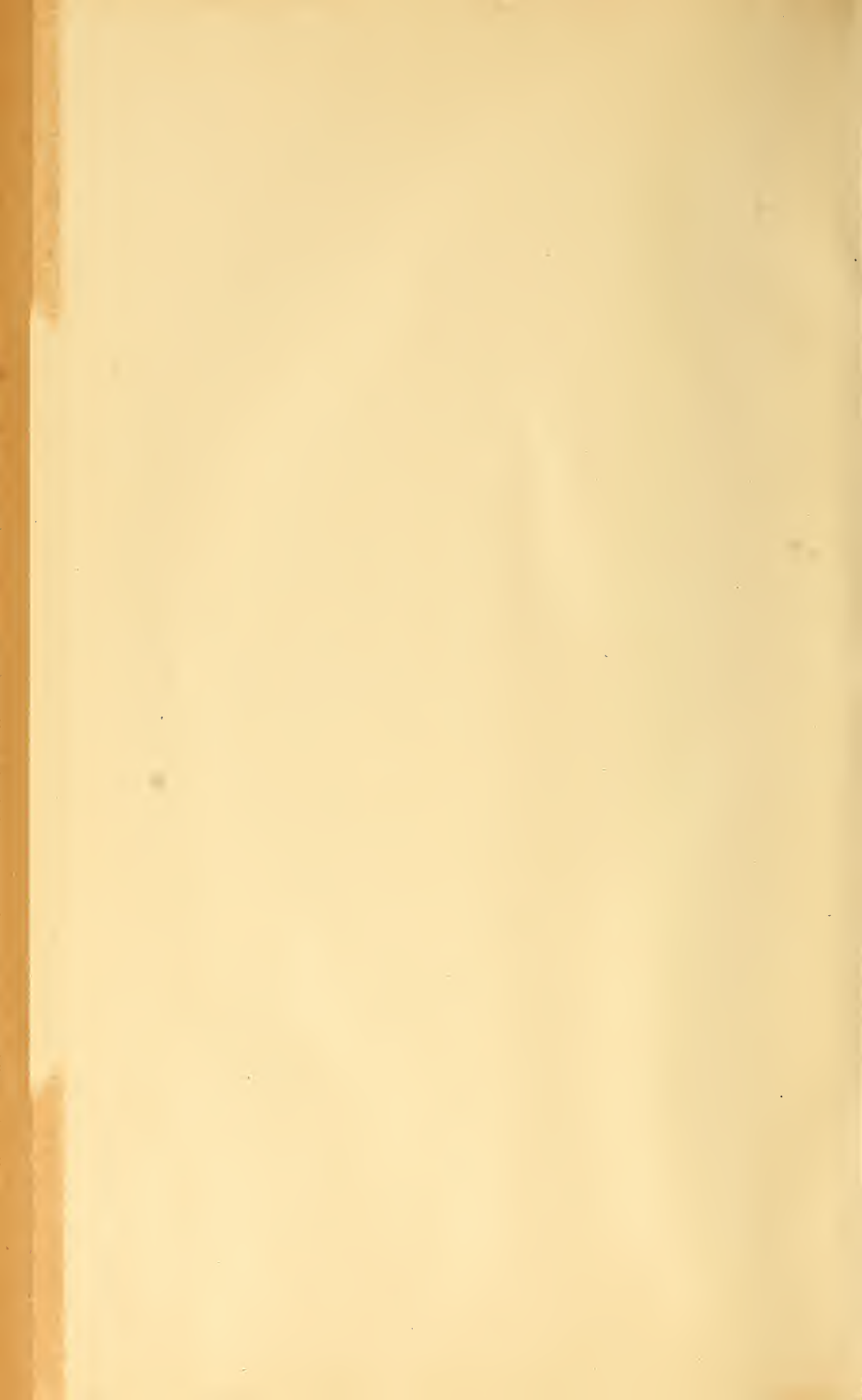
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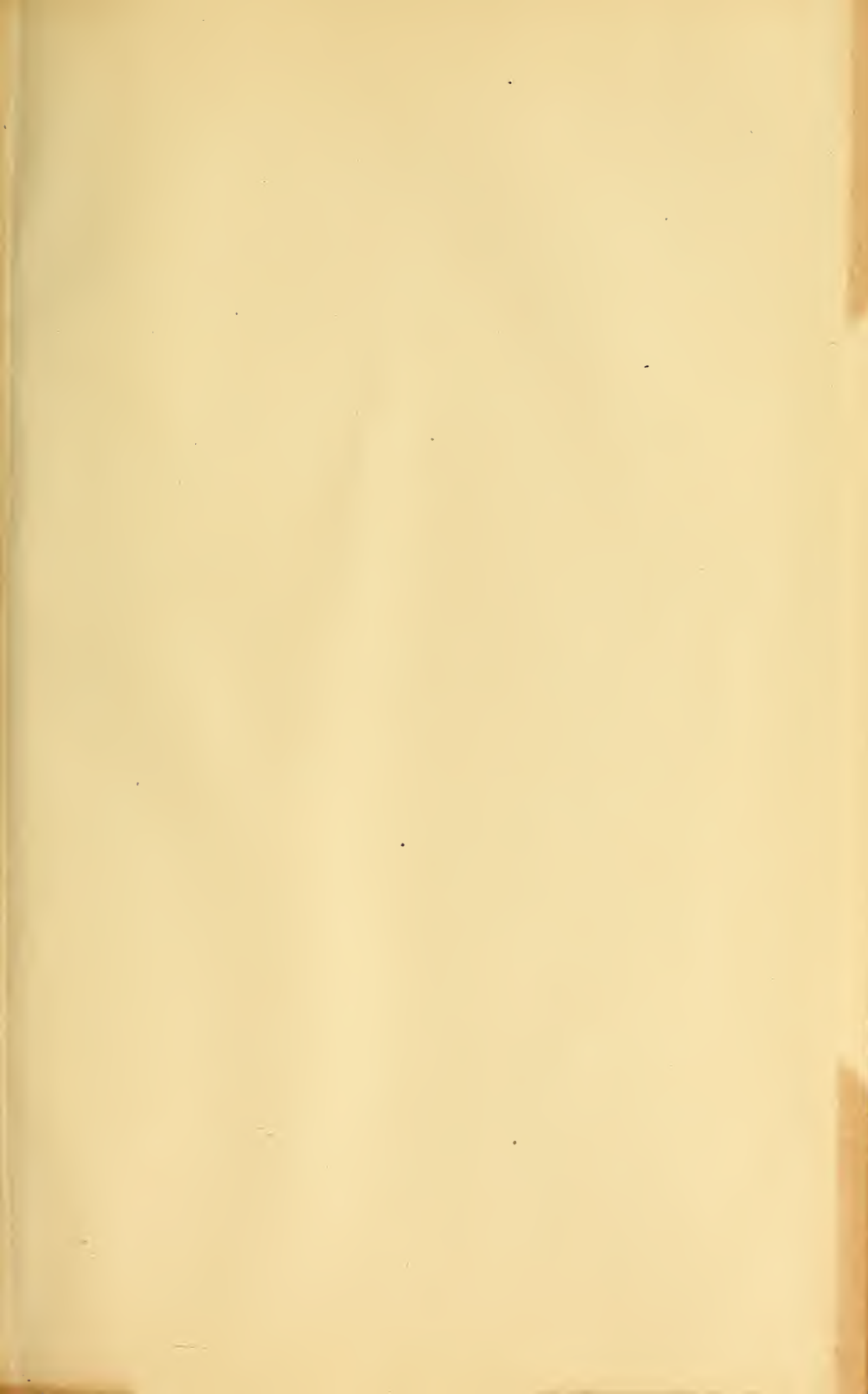
How long elector to reside in.....	82
Voting in wrong one.....	2343
Elector's residence in.....	6192
Witnesses to recount of votes.....	6296

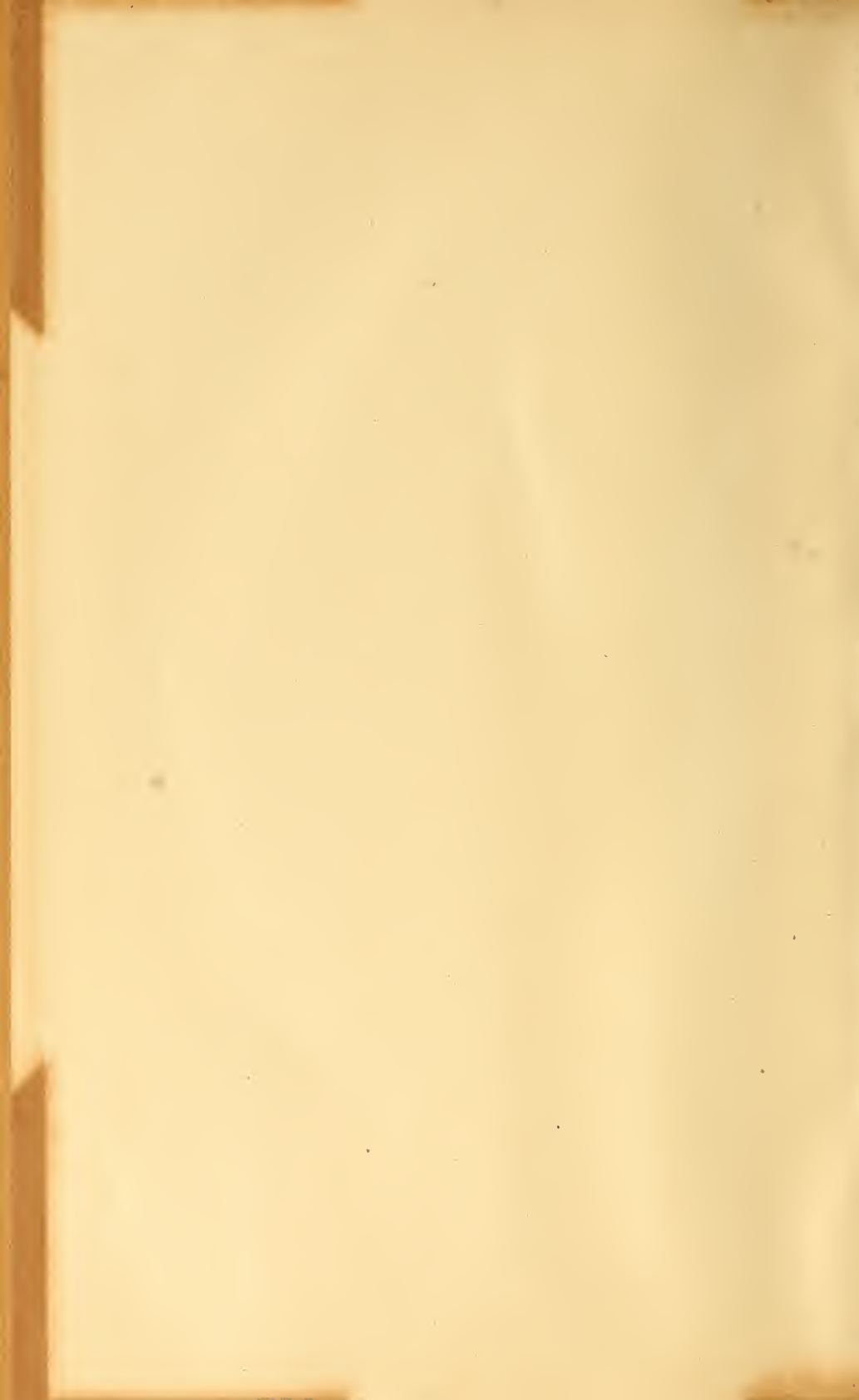
WRONG PRECINCT—

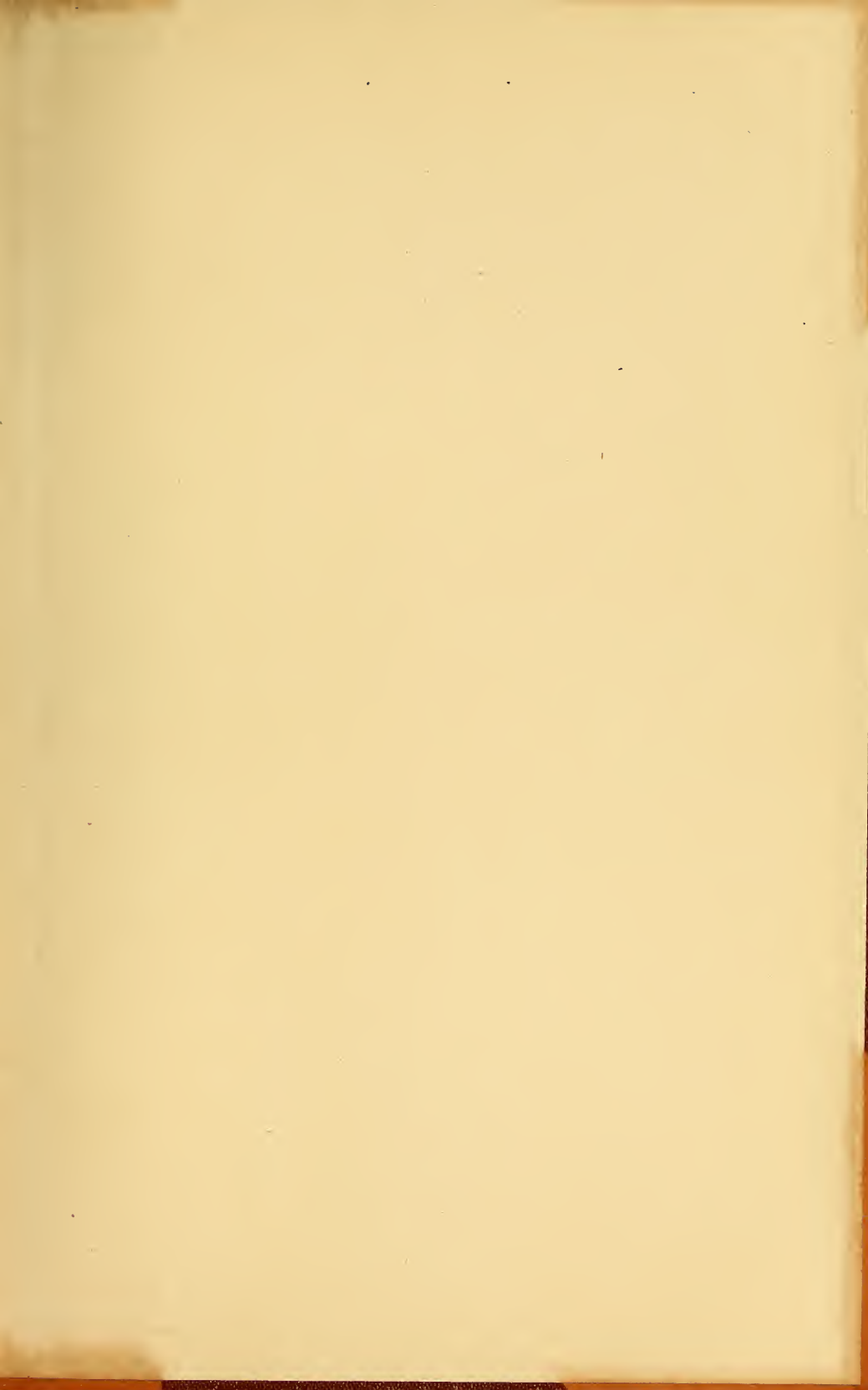
Voting in.....	2323
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